

148
U.S. Circuit Court (7th Circuit)

George M. Pullman and Pullman's
Palace Car Co. versus The New
York Central Sleeping Car Company
and Webster Wagner

PAPER EXHIBITS.

	Filed in Evidence. PAGE	Printed in Book of Exhibits. PAGE
Affidavit, Badger, Wheeler Extension Patent No. 25,499.....	815	45
“ Goodman, Wheeler Extension Patent No. 25,499....	815	48
“ Lumsden, Petersburg Car, (complainants').....	322	51
Assignment, Brown, W. A., Patent No. 29,137, July 17, '60....	816	5
“ Brown, W. A., Patent No. 33,979, Dec. 24, '60 ..	816	5
“ Burke, E., Patent No. 30,517, Oct. 23, '60.....	816	6
“ Case, S. C., Patent No. 20,622, June 22, '58.....	817	8
“ Central Transportation Company	816	3
“ Creighton, J. B., Patent No. 20,254, May 18, '58..	816	6
“ Creighton, J. B., Patent No. 21,600, Sept. 28, '58.	816	6
“ Field & Pullman, Patent No. 42,182, Apl. 5, '64... 816		13
“ Field, Ben, Patent No. 56,853, July 31, '66.....	817	16
“ Green, P. B., Patent No. 22,364, Dec. 21, '58....	816	6
“ Knight, E. C., Patent No. 24,563, Jan. 28, '59....	816	5
“ Knight, E. C., Patent No. 25,570, Sept. 27, '59....	816	5
“ Knight, E. C., Patent No. 27,297, Feb. 28, '60....	816	5
“ Longstreet, A., Patent No. 89,539, Apl. 27, '69....	817	20
“ Mann, C. M., Patent No. 21,352, Aug. 31, '58....	817	26
“ Manier, B. F., Patent No. 113,539, Apl. 11, '71... 817		22
“ Myer, H. B., Patent No. 11,699, Sept. 19, '54....	816	5
“ Ruttan, H. J., Patent No. 8,109, Jan. 15, '51....	817	31
“ Sutherland, J. B., Patent No. 29,635, Aug. 14, '60.	817	34
“ Van Hoeton, I. W. (license) Patent No. 29,022, July 31, '60.....	816	6
“ Wheeler, Eli, Patent No. 21,099, Aug. 3, '58....	816	5
“ Wheeler, Eli, Patent No. 25,499, Sept. 20, '59....	816	5
“ Woodruff, Jonah, Patent No. 71,258, Nov. 19, '67.	816	6
“ Woodruff, T. T., Patent No. 16,159, Dec. 2, '56..	816	5
“ Woodruff, T. T., Patent No. 16,160, Dec. 2, '56..	816	5
“ Woodruff, T. T., Patent No. 24,257, May 31, '59..	816	5
“ Woodruff, T. T., Patent No. 26,942, Jan. 24, '60..	816	5
Badger, affidavit, Wheeler Extension Patent No. 25,499....	815	45
Bill—Fort Wayne Car.....	582	63
“ Booth, Richmond Car.....	65	57
“ Richards “	65	59
“ Worden, “	238	56
Booth's bill, Richmond Car.....	65	57
Bragg Drawing, Richmond Car.....	84	381
Brown, W. A., assignment, Patent No. 29,137, July 17, '60....	816	5

XII.

	Filed in Evidence. PAGE.	Printed in Book of Exhibits. PAGE.
Brown, W. A., assignment, Patent No. 33,979, Dec. 24, '60...	816	5
Brown, 1860, Patent No. 29,137.....	814	217
Buell, 1852, Patent No. 8,935, May 11, '52.....	811	123
Burke & Sulger, 1860, Patent No. 30,517, Oct. 23, 1860	814	331
Burke, E., assignment, Patent No. 30,517, Oct. 23, 1860.....	816	6
Case, assignment, Patent No. 20,622, June 25, '58	817	8
Central Transportation Company's assignment.....	816	3
Chambersburg Car, drawing of model	826	377
Cobb Extension, 1858 Patent, No. 20,777, Examiner's report....	810	37
Cobb, File Wrapper and Contents, 1858 Patent, No. 20,777....	809	64
Cobb, 1858, Patent No. 20,777 [<i>Complainants' Exhibit No. 2</i>]....		143
Complainants' Exhibit No. 1, Woodruff, 1871, Reissue No. 4,241.....		285
Complainants' Exhibit No. 2, Cobb, 1858, Patent No. 20,777....		143
“ “ “ 3, Wheeler, 1875, Reissue No. 6,651. ..		211
“ “ “ 4, Field & Pullman, 1875, Reissue No. 6,648.....		257
Complainants' Lumsden affidavit.....	322	51
Commissioner's Decision, Woodruff, 1859, Patent No. 24,257... 810		42
Contract, Gillette, Fort Wayne Car.....	582	62
Creighton, J. B., assignment, Patent No. 20,254, May 18, '58... 816		6
“ “ “ “ 21,600, Sept. 28, '58... 816		6
“ “ “ “ 1858, Patent No. 21,600, Sept. 28, '58	811	307
Decision Commissioner, Woodruff, 1859, Patent No. 24,257.... 810		42
Decision Supreme Court, D. C., Woodruff, 1860, Patent No. 26,942 [<i>Printed with File and Contents</i>].....	809	99
Dirks, 1859, Patent No. 24,998, Aug. 9, '59	812	195
Drawing—Chambersburg Car....	826	377
“ Erie Car.....	831	395
“ Fort Wayne Car.....	832	391
“ Petersburg Car, No. 1.....	824	387
“ Petersburg Car, No. 2 ..	825	387
“ Richmond Car.....	823	379
“ “ “ Bragg Drawing.....	84	381
“ Rock Island Car.....	830	397
“ Springfield Car.....	831	389
“ Springfield Car, Photograph	789	399
“ Stephenson Car.....	830	383
“ Stephenson Car Seat	713	385
“ Stephenson Car (complainants' lithograph).....	717	401
“ Toledo Car.....	828	393
Dulaney & Moore, 1858, Patent No. 22,471, Dec. 28, '58	811	169
Emery, 1848, Patent No. 5,641, June 20, 1848.....	810	111
English patent, Hazeldine, 1855, No. 516	813	341
English patent, Leroy, 1855, No. 2,259.....	809	355
Erie Car, drawing of model	831	395
Examiner's Report, Cobb Extension, 1858, Patent No. 20,777... 810		37
Extension, Cobb Patent No. 20,777, Examiner's Report.	810	37
Extension, Wheeler, 1859, Patent No. 25,499, Badger affidavit.. 815		45
Extension, Wheeler, 1859, Patent No. 25,499, Goodman affidavit 815		48
Field, Assignment, 1864, Patent No. 42,182, Apl. 5, '64.....	810	13
Field, Assignment, 1866, Patent No. 56,853, July 31, '66.....	817	16
Field & Pullman, 1864, Patent No. 42,182, Apl. 5, '64.....	815	239

NOTICE

AFTER CAREFUL EXAMINATION OF THE
INNER MARGIN AND TYPE OF MATERIAL
WE HAVE SEWN THIS VOLUME BY HAND
SO IT CAN BE MORE EASILY OPENED
AND READ.

NOTICE

THE CAREFUL EXAMINATION OF THE
THE MARGIN AND TYPE OF MATERIAL
HAVE BEEN THIS VOLUME BY HAND
IT CAN BE MORE EASILY OPENED
I READ

XIII.

	Filed in Evidence. PAGE	Printed in Book of Exhibits. PAGE
Field & Pullman, 1865, Original Patent No. 49,992, Sept. 19, '65 (<i>For Reissue No. 6,648, see Complainants' Exhibit No. 4.</i>)....	813	245
Field & Pullman, Reissue No. 6,648 (<i>Complainants' Exhibit No. 4.</i>) ..		257
File Wrapper and contents, Cobb, 1858, Patent 20,777.....	809	64
File Wrapper and contents, Pullman, 1868, Reissue 2,862.....	813	79
File Wrapper and Contents, Woodruff, 1860, Patent 26,942.....	810	90
Fisher, 1860, Patent No. 30,472, Oct. 23, '60.....	814	233
Fort Wayne Bill.	582	63
Fort Wayne Car, drawing of model.	832	391
Fort Wayne Car, Fort Wayne bill	582	63
Fort Wayne Car, Gillette contract.....	582	62
Gillette Contract, Fort Wayne Car.....	582	62
Goodman Affidavit, Wheeler Extension, Patent No. 25,499.....	815	48
Green, P. B., assignment, Patent No. 22,364, Dec. 21, '58.....	816	6
Green, 1858, Patent No. 22,364, Dec. 21, '58.....	814	291
Harrington, 1858, Patent No. 21,070, Aug. 3, '58	815	149
Hazeldine, 1855, English Patent No. 516.....	813	341
Knight, 1859, Patent No. 24,563, Jan. 28, '59.....	812	187
Knight, E. C., Assignment, Patent No. 24,563, Jan. 28, '59....	816	5
Knight, E. C., " " " 25,570, Sept. 27, '59....	816	5
Knight, E. C., " " " 27,297, Feb. 28, '60....	816	5
Leroy, 1855, English Patent No. 2,259.....	809	355
Lithograph Stephenson Car (Complainants').....	717	401
Longstreet, Assignment, Patent No. 89,539, Apl. 27, '69.....	817	20
Luce & Morrison, 1859, Patent No. 22,506, Jan. 4, '59.....	812	313
Lumsden's Complainants' Affidavit, Petersburg Car.....	322	51
McCurdy, 1857, Patent No. 17,047, Apl. 14, '57.....	813	137
McGraw, 1838, Patent No. 1,030, Dec. 10, '38.....	810	105
McNeill, 1859, Patent No. 24,136, May 24, '59.....	812	319
McNeill, 1859, Patent No. 24,225, May 31, '59.....	812	181
Manier, 1871, Patent No. 113,539, Apl. 11, '71.....	816	271
Manier, Assignment, Patent No. 113,539, Apl. 11, '71.....	817	22
Mann, 1858, Patent No. 21,352, Aug. 31, '58.....	814	163
Mann, Assignment, Patent No. 21,352, Aug. 31, '58	817	26
Myer, 1854, Patent No. 11,699, Sept. 29, '54.....	809	129
Myer, H. B., Assignment, Patent No. 11,699, Sept. 19, '54.....	816	5
Original Cobb, 1858, Patent No. 20,777, July 5, '58 (<i>Complainants' Exhibit No. 2.</i>).....		143
Original Field & Pullman, 1865, Patent No. 49,992, (<i>For Reissue No. 6,648, see Complainants' Exhibit No. 4.</i>).....		245
Original Wheeler, 1859, Patent No. 25,499. (<i>For Reissue No. 6,651, see Complainants' Exhibit No. 3.</i>).....		201
Original Woodruff, 1856, Patent No. 16,159. (<i>For Reissue No. 4,241, see Complainants' Exhibit No. 1.</i>).....		277
Original Woodruff, 1856. Patent No. 16,160.....	811	297
Patents owned by Pullman:		
" Brown, W. A., ... No. 29,137, July 17, '60.....		..
" " " " No. 33,979, Dec. 24, '60.....		..
" Burke, E., ... No. 30,517, Oct. 23, '60.....		..
" Case, S. C., ... No. 20,632, June 22, '58.....		..
" Cobb, Zenas, ... No. 20,777, July 6, '58.....		..
" Creighton, J. B., No. 20,254, May 18, '58.....		..

XIV.

	Filed in Evidence. PAGE	Printed in Book of Exhibits. PAGE
Patents owned by Pullman:		
" Creighton, J. B., No. 21,600, Sept. 28, '58.....	..	..
" Field & Pullman, No. 42,182, Aug. 5, '64.....	..	..
" " " No. 49,992, Sept. 19, '65 .....	..	..
" Field, Ben, ... No. 56,853, July 31, '66.....	..	..
" Green, P. B., No. 22,364, Dec. 21, '58.....	..	..
" Knight, E. C., No. 24,563, June 28, '59.....	..	..
" " " No. 25,570, Sept. 27, '59.....	..	..
" " " No. 27,297, Feb. 28, '60 .....	..	..
" Longstreet, A., .. No. 89,539, Apl. 27, '69.....	..	..
" Mann, C. M., No. 21,352, Aug. 31, '58.....	..	..
" Myer, H. B., No. 11,699, Sept. 19, '54.....	..	..
" Pullman, Geo. M., No. 89,537, Apl. 27, '69.....	..	..
" " " No. 89,538, Apl. 27, '69.....	..	..
" Ruttan, H. J., No. 8,109, Jan. 15, '51.....	..	..
" Sutherland, J. B., No. 29,635, Aug. 14, '60 .....	..	..
" VanHoeton, I. W., No. 29,022, July 31, '60.....	..	..
" Wheeler, Eli, No. 21,099, Aug. 3, '58.....	..	..
" " " No. 25,499, Sept. 20, '59.....	..	..
" Woodruff, Jonah, No. 71,258, Nov. 19, '67.....	..	..
" Woodruff, T. T., No. 16,159, Dec. 2, '56.....	..	..
" " " No. 16,160, Dec. 2, '56.....	..	..
" " " No. 24,257, May 31, '59.....	..	..
" " " No. 26,942, Jan. 24, '60.....	..	..
Payne & Reid, 1859, Patent No. 23,604, April 12, '59.....	814	175
Pennoyer, 1860, Patent No. 29,813, Aug. 28, '60	814	225
Petersburg Car, drawing model No. 1.....	824	387
Petersburg Car, " " " No. 2.....	825	387
Petersburg Car, complainants' Lumsden affidavit.....	322	51
Photograph Springfield Car.....	789	399
Pullman, 1868, Reissue No. 2,862, Feb. 11, '68.....	813	251
Pullman, 1868, file and contents, Reissue No. 2.862.....	813	79
Reissue, Pullman, 1868, No. 2,862, Feb. 11, '68.....	813	251
Reissue, Pullman, 1868, No. 2,862, file and contents.....	813	79
Reissue, Pullman, No. 6,648 (<i>Complainants' Exhibit No. 4.</i>).....	..	257
Reissue, Woodruff, No. 4,241 (<i>Complainants' Exhibit No. 1.</i>).....	..	285
Reissue, Wheeler, 6,651 (<i>Complainants' Exhibit No. 3.</i>).....	..	211
Report, Examiner, Cobb Extension, Patent No. 20,777	810	37
Richards' bill, Richmond Car.....	65	59
Richmond Car, W. N. Bragg, drawing.....	84	381
Richmond Car, Booth's bill.....	65	57
Richmond Car, Richards' bill.....	65	59
Richmond Car, Worden bill.....	238	56
Richmond Car, drawing of model.....	823	379
Rock Island Car, drawing of model.....	830	397
Ruttan, Assignment, Patent 8,109, Jan. 15, '51.....	817	31
Scientific American, Dec. 14, '61	815	375
Snow, 1870, Patent No. 103,097, May 18, '70.....	816	265
Springfield Car, drawing of model.....	831	389
Springfield Car, photograph.....	789	399
Stephenson Car, drawing of model.....	830	383

XV.

	Filed in Evidence. PAGE	Printed in Book of Exhibits. PAGE
Stephenson Car, drawing car-seat (original)	713	385
Stephenson Car, drawing car-seat (copy)	714	385
Stephenson Car, lithograph (complainants')	717	401
Sutherland, Assignment, Patent 29,635, Aug. 14, '60	817	34
Supreme Court Decision, Woodruff, 1860, Patent No. 26,942 [Printed with File and Contents]	809	99
Toledo Car, drawing of model	828	393
Van Hoeton, I. W., assignment license, Patent No. 29,022	816	6
July 3, '60	811	117
Warren, 1850, Patent No. 7,404, May 28, '50	811	117
Wheeler, 1859, original Patent No. 25,499, Sept. 20, '59 (<i>For Re-</i> <i>issue No. 6,651, see Complainants' Exhibit No. 3.</i>)	811	201
Wheeler Extension, 1859, original Patent No. 25,499, Badger affidavit	815	45
Wheeler Extension, 1859, original Patent No. 25,499, Goodman affidavit	815	48
Wheeler, Reissue No. 6,651 (<i>Complainants' Exhibit No. 3.</i>)	816	211
Wheeler, Eli, Assignment, Patent No. 21,099, Aug. 3, '58	816	5
Wheeler, Eli, " " No. 25,499, Sept. 20, '59	816	5
Woodruff, Reissue 4,241 (<i>Complainants' Exhibit No. 1.</i>)	816	285
Woodruff, Jonah, Assignment, Patent No. 71,258, Nov. 19, '67	816	6
Woodruff, T. T. Assignment, Patent No. 16,159, Dec. 2, '56	816	5
" " " No. 16,160, Dec. 2, '56	816	5
" " " No. 24,257, May 31, '59	816	5
" " " No. 26,942, Jan. 24, '60	816	5
Woodruff, 1856, Original Patent No. 16,159, Dec. 2, '56 (<i>For</i> <i>Reissue No. 4,241, see Complainants' Exhibit No. 1.</i>)	809	277
Woodruff, 1856, Original Patent No. 16,160, Dec. 2, '56	811	297
Woodruff, 1859, Patent No. 24,257, Commissioner's decision	810	42
" 1860, " No. 26,942, Jan. 24, '60	810	325
" 1860, " No. 26,942, file and contents	810	90
" 1860, " No. 26,942, Decision, Supreme Court, D. C.	809	99
Worden bill, Richmond Car	238	56

EXHIBIT MODELS.

	Filed in Evidence. Page	Drawing in Book of Exhibits. Page
Burke & Sulger 1860 Patent, No. 30,517.....	835	335
Chambersburg Car Model.....	391	377
Chambersburg Car Berth Bolt.....	408	..
Chambersburg Car Sash	403	..
Erie Car Model.....	782	395
Field & Pullman Reissued Patent, No. 6648		
[<i>Complainants' Exhibit, No. 4</i>]......	836	261
Fort Wayne Car Model.....	611	391
Fort Wayne Car, Wilson Pattern, No. 1.....	585	..
Fort Wayne Car, Wilson Pattern, No. 2.....	585	..
Fort Wayne Car, Wilson Pattern, No. 3.....	585	..
Green 1858 Patent, No. 22,364.....	835	295
Hazeldine 1855 English Patent, No. 516.....	834	351
Knight 1859 Patent, No. 24,563.....	834	191
Leroy 1855 English Patent, No. 2,259.....	833	363
Luce & Morrison 1859 Patent, No. 22,506.....	834	317
Myer 1854 Patent, No. 11,699.....	833	133
Petersburg Car Model.....	321	387
Petersburg Car, Complainants' Lumsden Model,		
Baltimore Suit.....	333	..
Richmond Car Model.....	61,106	379
Rock Island Car Model.....	689	397
Springfield Car Model.....	788	389
Stephenson Car Model.....	714	383
Toledo Car Model.....	594	393
Toledo Car, Wilson Pattern, No. 4.....	591	..
Toledo Car, Wilson Pattern, No. 5.....	591	..
Toledo Car, Wilson Pattern, No. 6.....	592	..
Toledo Car, Wilson Pattern, No. 7.....	594	..
Wheeler 1859 Patent, No. 25,499, and Reissue No.		
6,651 [<i>Complainants' Exhibit, No. 3</i>]......	836	213
Wilson Patent Model.....	611	..
Woodruff Reissued Patent, No. 4,241		
[<i>Complainants' Exhibit, No. 1</i>]......	835	287
Wilson Pattern, No. 1, Fort Wayne Car.....	585	..
" " No. 2, " " " ".....	585	..
" " No. 3, " " " ".....	585	..
" " No. 4, Toledo Car.....	591	..
" " No. 5, " " " ".....	591	..
" " No. 6, " " " ".....	592	..
" " No. 7, " " " ".....	592	..

ANSWER

AS AMENDED.

UNITED STATES CIRCUIT COURT,

NORTHERN DISTRICT OF ILLINOIS.

GEORGE M. PULLMAN and PULL-
MAN'S PALACE CAR CO.

VERSUS

THE NEW YORK CENTRAL SLEEP-
ING CAR COMPANY and WEBSTER
WAGNER.

In Equity.

The joint and several answer of the New York Central Sleeping Car Company and Webster Wagner, respondents, to the bill of complaint exhibited against them by the above-named complainants.

These respondents, now and at all times hereafter reserving to themselves all and all manner of benefit and advantage of exception, which can or may be had or taken to the manifold errors, uncertainties, imperfections and insufficiencies in the said complainants' bill of complaint contained, for answer thereto, or to so much thereof as they are advised is material or necessary for them to make answer unto, answering, say:

I.

That upon information and belief they admit that, prior to the year 1859, sleeping cars had been adopted upon a few railways of the country; but

- 5 they deny that such cars were, for the most part, crude and unsatisfactory in their arrangements and appointments, or were confined to the roads or railway companies owning them, or were not suited to the necessities of travel on long lines, as alleged in the bill of complaint.

- And these respondents, further answering, say, that they have no knowledge sufficient to form a belief as to whether one of the complainants, George M. Pullman, conceived the project of an organization auxiliary to railway companies, which should provide cars adequate for both night and day travel, and superintend their use; or that about the year 1859 said Pullman began, in a limited way, an experiment having these ends in view; or that he devoted much time and study and incurred great expense in efforts to perfect and construct a car which should answer all the wants of travelers, both by day and by night, as alleged in the bill of complaint, and they leave the complainants to make such proof thereof as they may be advised. But these respondents deny that the said Pullman was the first to conceive of such a project or the first to provide cars adequate to the necessities of both night and day travel.

- These respondents, further answering, deny; that the said Pullman, in connection with one Ben Field, invented certain improvements described in and covered by certain Letters Patent as alleged in the bill of complaint; and they deny that the said Pullman, by the use of the alleged improvements alleged to have been made by him and one Ben Field, and other alleged inventions embraced in other Letters Patent mentioned in the bill of complaint, made a car which has been recognized by railroad companies and by the travelling public as substantially perfect for the purposes designed, as alleged in the bill of complaint, and they leave the complainants to make such proof thereof as they may be advised.

These respondents, further answering, say; that they have no information sufficient to form a belief

as to whether the enterprise alleged to have been inaugurated by the said Pullman soon met with such favor and success that a corporate organization became necessary; or whether the complainant corporation was organized, and the business and cars and other property which had been acquired by the said Pullman for use in connection with such enterprise were transferred to such corporation; or whether it has since conducted such business; or whether such business has greatly increased and extended; or whether the money actually invested and in use in carrying on the said business is over the sum of ten million dollars; or whether the stock of said corporation amounts to six million dollars; or whether the whole of the same has been paid into said corporation by its stockholders; or whether the stock is distributed in the hands of a large number of owners residing in all parts of the United States; or whether among those owners are minors and the beneficiaries of trust estates, all as alleged in the bill of complaint, and they leave the complainants to make such proof thereof as they may be advised.

These respondents, further answering, say; that they have no information sufficient to form a belief as to whether the said Pullman, after having entered into the sleeping car business, deemed it necessary to secure the right to use and control several patents alleged to cover inventions applicable to the construction of sleeping cars; or whether, prior to the organization of the complainant corporation, he purchased several of said patents; or whether, since the organization of said corporation, it has purchased others at very large expense; or whether the complainants have expended for said patents a sum exceeding three hundred thousand dollars; or whether, since the alleged purchase of said patents, the complainant corporation has expended other large sums of money in manufacturing convertible railway cars in accordance with the alleged inventions described and set forth in said several Letters

- 13 Patent, and in introducing said cars upon the various lines of railroads throughout the United States; or whether in 1871 it acquired works at Detroit, Mich., and began the construction of its own cars; or whether in 1872 it acquired other works at Elmira, N. Y.; or whether it now employs at Detroit about five hundred and at Elmira about one hundred and fifty men; or whether in the construction and repair of its cars and the general conduct and management of its business it keeps in employment
- 14 on an average about twenty seven hundred men; or whether the complainant corporation and its licensees have built and are now running more than eight hundred sleeping cars embodying the alleged valuable features of the said alleged inventions; or whether such cars have been constructed and conveniently and elegantly furnished at very large expense; or whether the said corporation and the public generally have derived great benefit and advantage from the use of the said alleged inventions, all
- 15 as alleged in the bill of complaint, and they leave the complainants to make such proof thereof as they may be advised. But these respondents deny that the public generally, and these respondents in particular, have acquiesced in and acknowledged the validity of any of such Letters Patent, and of any alleged rights of the complainants therein and thereunder; and they deny that they have performed any unlawful acts, or have infringed any alleged rights of the complainants, or that they have any
- 16 confederates that have done so, as alleged in the bill of complaint.

These respondents, further answering, say; that whatever said Pullman or said complainant corporation has done by way of constructing sleeping cars, or promoting the travel in sleeping cars, if at all, has been done for his and its own pecuniary advantage, and they are informed and believe that he and it have made and realized large fortunes therefrom.

II.

17

These respondents, further answering, say; that, upon information and belief alone, they admit that certain Letters Patent of the United States, bearing date December 2d, 1856, No. 16,159, for an alleged improvement in railroad car seats and couches, were obtained by one Theodore T. Woodruff; that they were reissued March 17th, 1863, reissue No. 1,439; that they were extended for seven years from the expiration of the original term thereof, and again reissued January 24th, 1871, reissue No. 4,241; but these respondents, on information and belief, deny that said T. T. Woodruff was the original and first inventor of the alleged improvements described in said original and reissued Letters Patent, and that the same had not been known or used before his alleged invention thereof; and that the same had not been in public use and on sale for more than two years before the application for his original Letters Patent therefor with his consent and allowance; and that the requirements of law were complied with in obtaining said original Letters Patent, extension and reissues thereof, and that the reissues were obtained for good and lawful cause and for the same invention as that contained in the original Letters Patent; and that the said reissues and extension were granted in accordance with the then existing Acts of Congress, all as alleged in the bill of complaint.

18

19

These respondents, further answering, on information and belief, answer and say:

20

1. That the written description accompanying the said reissued Letters Patent, reissue No. 4,241, does not explain the principle of the alleged invention or discovery, and the best mode in which the patentee has contemplated applying that principle so as to distinguish it from other inventions.

2. That the patentee, in the specification of said

21 reissued Letters Patent, reissue No. 4,241, has not particularly pointed out and distinctly claimed the part, improvement or combination which he claims as his invention or discovery.

3. That the original Letters Patent No. 16,159, in lieu of which said reissued Letters Patent, reissue No. 4,241, were granted, were not inoperative or invalid, by reason of a defective or insufficient specification, or by reason of the patentee claiming
22 as his own invention or discovery more than he had a right to claim as new; and were not in any degree inoperative or invalid by reason of any inadvertence, accident or mistake; and the same were not surrendered, nor were reissued Letters Patent, reissue No. 4,241, issued in lieu thereof for good and lawful cause.

4. That said reissued Letters Patent, reissue No. 4,241, are not for the same alleged invention or discovery as was patented, or attempted to be patented,
23 in the original Letters Patent granted the said Theodore T. Woodruff, December 2, 1856, No. 16,159.

5. That said reissued Letters Patent, reissue No. 4,241, were obtained for the purpose of including therein inventions or discoveries constituting new matter, not shown or described in the original application or patent of the said Theodore T. Woodruff, or in the models or drawings, or in any matters
24 or things accompanying the same, and were fraudulently intended or attempted to be obtained for the purpose of introducing ambiguous claims, and for that which was not in fact patentable, or the subject-matter of invention, by means of which to terrify timid people, and which could be, or seem to be, capable of being construed, as the exigency of any particular case might suggest or seem to render advantageous to the complainants, and of suppressing or appropriating the inventions of other persons.

6. That the obtaining of said reissued Letters Patent, reissue No. 4,241, was a fraudulent attempt to expand a simple invention of distinct devices, into all-embracing claims, calculated by their wide generalizations and ambiguous language to discourage further invention in the same department of industry, and by a multiplication of nebulous claims, to deceive and mislead the public. 25

7. That for the purpose of deceiving the public, the description and specification filed by the patentee of said reissued Letters Patent, reissue No. 4,241, in the Patent Office, was made to contain less than the whole truth relative to his alleged invention or discovery. 26

8. That the alleged invention described and claimed in said reissued Letters Patent, reissue No. 4,241, is not and never has been of any utility or value whatsoever.

9. That the alleged invention described and claimed in said reissued Letters Patent, reissue No. 4,241, has been abandoned to the public. 27

10. That the alleged invention or discovery described and claimed in said reissued Letters Patent, reissue No. 4,241, was not and is not an invention or discovery or the proper subject-matter of Letters Patent of the United States; and that the same was and is the result of mere mechanical skill and judgment. 28

11. That the alleged invention or discovery described and claimed in reissued Letters Patent, reissue No. 4,241 had been, prior to the alleged invention or discovery thereof, by the said Theodore T. Woodruff, described and shown in the specifications and drawings, and patented in the following Letters Patent:

Letters Patent of the United States granted to N. McGraw, December 10, 1838, No. 1,030.

- 29 Letters Patent of the United States granted to J. A. Robson, November 20, 1849, No. 6,893.
 Letters Patent of the United States granted to A. B. Buell, May 11, 1852, No. 8,935.
 Letters Patent of the United States granted to J. Briggs, July 6, 1852, No. 9,091.
 Letters Patent of the United States granted to Henry B. Myer, September 19, 1854, No. 11,699.
 English Letters Patent granted to James Rock, the younger, October 30, 1852, No. 587.
- 30 English Letters Patent granted to George Hazeldine, March 8, 1855, No. 516.
 English Letters Patent granted to Narcisse Leroy, October 9, 1855, No. 2,259.

- 12.** That the said Theodore T. Woodruff was not the original and first inventor or discoverer of any material or substantial part of the alleged invention or discovery described and claimed in reissued Letters Patent, reissue No. 4,241, but that the same
- 31 had been known and used in this country before the date of the alleged invention or discovery thereof by the said Theodore T. Woodruff, that is to say:

At the car works of John Stephenson, in the City, County and State of New York.

Also at the Cities of Auburn, Cayuga County, and Syracuse, Onondaga County, in the State of New York, and on and along the line of the Auburn and Syracuse Railroad, intermediate between those cities, by the company operating said railroad.

- 32 Also at the Cities of New Brunswick, Middlesex County, and Jersey City, Hudson County, State of New Jersey, and on and along the line of the New Jersey Railroad and Transportation Company, now the Pennsylvania Railroad, intermediate between those cities, by the company operating said railroad.

That the same was known to John Stephenson, residing in the City of New York aforesaid; William S. Dodge, residing in Olinville, Westchester, Westchester County, State of New York; and

Joseph F. Tolson, residing in Jersey City Heights, 33
Jersey City, Hudson County, State of New Jersey.

Also at the Towns of Piermont, Rockland County,
and Port Jervis, Orange County, State of New
York, and on and along the line of the New York
and Erie Railroad, now the New York, Lake Erie
and Western Railroad, intermediate between those
towns, by the company operating said railroad.

That the same was known to John D. Brower,
residing in Jersey City Heights, Jersey City afore-
said; Henry Ayres, residing in Tioga County, New 34
York; Joseph F. Tolson, aforesaid, Calvin A. Smith
and Levi H. Coover, both residing in Jersey City
aforesaid; W. E. Rutter, residing in Elmira, Che-
mung County, State of New York; and Henry L.
Brown, residing in New Lebanon, Columbia County,
State of New York.

Also at the Cities of Springfield, Hampden
County, and Worcester, Worcester County, State of
Massachusetts, and on and along the line of the 35
Western Railroad, now the Boston and Albany
Railroad, intermediate between those cities, by the
company operating said railroad.

That the same was known to Charles P. Nichols,
Andrew J. Chapin and John Mulligan, all residing
in Springfield aforesaid, and to James Parker, now
deceased, formerly residing in Springfield aforesaid.

Also, at the City of Chambersburg, Franklin
County, State of Pennsylvania, and on and along
the line of the Cumberland Valley Railroad, by the 36
company operating said railroad.

That the same was known to Jacob Shaffer, T. B.
Wood, Daniel O. Gehr, Daniel Hull, A. S. Hull,
Alex. H. McCulloh, G. W. Nitterhouse, O. N. Lull,
James Adams, John Shaffer, John D. Grier, Jacob
Hyser, James C. Austin, and Imanuel Hale, all
residing in Chambersburg aforesaid; P. W. Seibert,
John Saunders and George W. Snider, now
deceased, formerly residing in Chambersburg
aforesaid; W. D. E. Hayes, Daniel McPherson
and John Altic, all residing in Ship-

- 37 pensburg, Cumberland county, State last aforesaid; John McCurdy, now deceased, formerly residing in Shippensburg, last aforesaid; Anthony Byers, residing in Newville, county and State last aforesaid; Frederick Watts, Edward M. Biddle, James M. Allen, William B. Murray, Jacob Rhum, John Rhodes, all residing in Carlisle, Cumberland county, State last aforesaid; John Wallower, J. H. Bell, J. B. Boyd, all residing in the City of Harrisburg, Dauphin county, State of Pennsylvania; E. B. Byers, now deceased, formerly residing in the City of Harrisburg aforesaid; Lorenzo D. Gorton, residing in Philadelphia, Philadelphia county, State last aforesaid; Richard Imlay, now deceased, formerly residing in the same place; William Murray, residing in Altoona, Blair county, State last aforesaid; William Millner Roberts, residing in Pittsburg, Allegheny county, State last aforesaid; William Clautice, residing in Baltimore, Baltimore county, State of Maryland; Joseph F. Tolson, aforesaid; Jesse W. Deal, now on the Pacific Railroad; and Joseph M. Miller, residing in Cleveland, Cuyahoga county, State of Ohio.

Also, at the Cities of Philadelphia aforesaid, and Baltimore, Baltimore county, State of Maryland, and on and along the line of the Philadelphia, Wilmington and Baltimore Railroad, intermediate between those cities, by the company operating said railroad.

- 40 That the same was known to Joseph F. Tolson and Richard Imlay aforesaid; John B. Hill, residing in Jersey City, aforesaid; Jacob Frist, residing in Chattanooga, Hamilton county, State of Tennessee; Samuel Harlan, Jr., James Elliot and Thomas W. Bowers, all residing in Wilmington, Newcastle county, State of Delaware; Jacob S. Shryack, residing in Baltimore aforesaid, and G. H. Huddell, residing in Philadelphia aforesaid.

Also, at the Cities of Richmond, Henrico county, and Fredericksburg, Spottsylvania county, State of Virginia, and on and along the line of the Rich-

mond, Fredericksburg and Potomac Railroad, intermediate between those cities; also at the towns of Gordonsville, Orange county, and Hanover Junction, Hanover county, State of Virginia, and on and along the line of the Louisa Railroad, intermediate between those towns, by the company operating said railroads. 41

That the same was known to Stephen W. Worden, residing in Albany, Albany county, State of New York; Robert P. Davis, residing three miles east from Rapidan Station on the Gordonsville and Alexandria Railroad in Orange county, State of Virginia; W. N. Bragg, Stephen Hunter, Warner Lindsay, Charles Hartwell, James H. Coghill, deceased, Henry Dean, John J. Pendleton, and Ivory P. Hodgdon, deceased, residing in Richmond aforesaid; H. D. Bird, residing in Petersburg, Dinwiddie county, State of Virginia; A. B. Adams, residing in Fredericksburg aforesaid; Thomas T. Chandler, residing in Caroline county, State last aforesaid. 42

Also, at the Cities of Petersburg, aforesaid, and Weldon, Halifax county, State of North Carolina, and on and along the line of the Petersburg Railroad (sometimes called the Petersburg and Roanoake Railroad), intermediate between those cities, by the company operating said railroad. 43

Also at the car works of Betts, Pusey & Harlan, in the City of Wilmington aforesaid.

That the same was known to Alexander Wright, William C. Lumsden, H. D. Bird, William C. Butler, Thomas W. Sykes, John H. Harrison, Richard Graves, Mrs. Ann E. Stiles, and William H. McGee, all residing in Petersburg aforesaid; William Etten- 44
ger, residing in Richmond aforesaid; E. I. Thomas, residing at Pleasant Hill, North Carolina, Samuel Harlan, Jr., and Thomas W. Bowers aforesaid.

Also, at the Cities of Baltimore aforesaid, and Frederick, Frederick county, State of Maryland, and on and along the line of the Baltimore and Ohio Railroad, intermediate between those cities, by the company operating said railroad.

45 That the same was known to Jacob S. Shryack, Orlando G. White, James Reeves, Hiram Ensor, all residing in Baltimore aforesaid; Samuel J. Hayes, residing in Chicago, Cook county, State of Illinois; and James Murray, now residing in Russia.

13. That the alleged invention or discovery described and claimed in reissued Letters Patent, re-issue No. 4,241, had been in public use and on sale in this country for more than two years before the application of the said Theodore T. Woodruff for
46 the original Letters Patent therefor, with his consent and allowance, that is to say:

At the car works of John Stephenson aforesaid.

Also at the Cities of Auburn and Syracuse aforesaid, and on and along the line of the Auburn and Syracuse Railroad, intermediate between those cities, by the company operating said railroad.

Also at the Cities of New Brunswick and Jersey City aforesaid, and on and along the line of the New-Jersey Railroad and Transportation Company, now
47 the Pennsylvania Railroad, intermediate between those cities, by the company operating said railroad.

That the same was known to John Stephenson, William S. Dodge and Joseph F. Tolson, aforesaid.

Also, at the towns of Piermont and Port Jervis, aforesaid, and on and along the line of the New York and Erie Railroad, now the New York, Lake Erie and Western Railroad, intermediate between
48 those towns, by the company operating said railroad.

That the same was known to John D. Brower, Henry Ayres, Joseph F. Tolson, Calvin A. Smith, Levi H. Coover, W. E. Rutter and Henry L. Brown, aforesaid.

Also, at the cities of Springfield and Worcester aforesaid, and on and along the line of the Western Railroad, now the Boston and Albany Railroad, by the company operating said railroad.

That the same was known to Charles P. Nichols,

Andrew J. Chapin, John Mulligan and James Parker, aforesaid. 49

Also, at the city of Chambersburg aforesaid, and on and along the line of the Cumberland Valley Railroad by the company operating said railroad.

That the same was known to Jacob Shaffer, T. B. Wood, Daniel O. Gehr, Daniel Hull, A. S. Hull, Alex. H. McCulloh, G. W. Nitterhouse, O. N. Lull, James Adams, John Shaffer, John D. Grier, Jacob Hyser, James C. Austin, Imanuel Hale, P. W. Seibert, John Saunders, George W. Sneider, W. D. E. Hayes, Daniel McPherson, John McCurdy, John Altic, Anthony Byers, Frederick Watts, Edward M. Biddle, James M. Allen, William B. Murray, Jacob Rhum, John Rhodes, John Wallower, J. H. Bell, J. B. Boyd, E. B. Byers, Lorenzo D. Gorton, Richard Imlay, William Murray, William Millner Roberts, William Clautice, Joseph F. Tolson, Jesse W. Deal and Joseph M. Miller, aforesaid. 50

Also, at the cities of Philadelphia and Baltimore, aforesaid, and on and along the line of the Philadelphia, Wilmington and Baltimore Railroad, intermediate between those cities, by the company operating said railroad. 51

That the same was known to Joseph F. Tolson, John B. Hill, Richard Imlay, Jacob Frist, Samuel Harlan, Jr., Thomas W. Bowers, James Elliott, G. H. Huddell and Jacob S. Shryack, aforesaid.

Also, at the cities of Richmond and Fredericksburg, aforesaid, and on and along the line of the Richmond, Fredericksburg and Potomac Railroad, intermediate between those cities; also at the towns of Gordonsville, Orange County, and Hanover Junction, Hanover County, State of Virginia, and on and along the line of the Louisa Railroad, intermediate between those towns, by the company operating said railroads. 52

That the same was known to Stephen W. Worden, Robert P. Davis, W. N. Bragg, Stephen Hunter, Warner Lindsay, Charles Hartwell, Ivory P. Hodgdon, H. D. Bird and A. B. Adams, aforesaid.

53 Also, at the cities of Petersburg and Weldon aforesaid, and on and along the line of the Petersburg Railroad (sometimes called the Petersburg and Roanoke Railroad), intermediate between those cities, by the company operating said railroad.

Also at the car works of Betts, Pusey and Harlan, aforesaid.

That the same was known to Alexander Wright, William C. Lumsden, H. D. Bird, William C. Butler, Thomas W. Sykes, John H. Harrison, Richard
54 Graves, Mrs. Ann E. Stiles, William McGee, William Ettinger, Samuel Harlan, Jr., and Thomas W. Bowers, aforesaid.

Also, at the cities of Baltimore and Frederick, aforesaid, and on and along the line of the Baltimore and Ohio Railroad, intermediate between those cities, by the company operating said railroad.

That the same was known to Jacob S. Shryack, Orlando G. White, James Reeves, Hiram Ensor, James Murray and Samuel J. Hayes, aforesaid.

55

14. That no car seats or couches such as are described and shown in the drawings, specifications or model of the said original Letters Patent, or as are described and shown in the specification and drawings of the reissued Letters Patent, reissue No. 4,241, were constructed or used prior to the filing of the original application in the Patent Office, and before the date of the grant of the original Letters Patent or since; and no car seats or couches
56 could be made to operate practically or usefully constructed in accordance with the said Letters Patent; and the alleged invention or discovery, as embodied in the said Letters Patent, was not and is not a useful invention or discovery within the meaning of the law, nor such as was or is the proper subject matter of Letters Patent.

III.

57

These respondents further answering, say; that upon information and belief alone, they admit that certain other Letters Patent of the United States, bearing date July 6, 1858, No. 20,777, for an alleged improvement in railroad car seats and berths, were obtained by one Zenas Cobb, and were extended for seven years from the expiration of the original term thereof; but these respondents, on information and belief, deny that said Zenas Cobb was the original and first inventor of the alleged improvements described in said Letters Patent; and that the same had not been known or used before his alleged invention thereof; and that the same had not been in public use for more than two years before his application for Letters Patent therefor, with his consent and allowance; and that the requirements of the law were complied with in obtaining said Letters Patent and extension, and that said Letters Patent and extension were granted in accordance with the then existing Acts of Congress, all as alleged in the bill of complaint. 58 59

These respondents further answering, on information and belief, answer and say:

1. That the written description accompanying the said Letters Patent No. 20,777, does not explain the principle of the alleged invention or discovery, and the best mode in which the patentee has contemplated applying that principle so as to distinguish it from other inventions. 60

2. That the patentee, in the specification of said Letters Patent No. 20,777, has not particularly pointed out and distinctly claimed the part, improvement or combination which he claims as his invention or discovery.

3. That for the purpose of deceiving the public, the description and specification filed by the pat-

61 entee of said Letters Patent No. 20,777, in the Patent Office, was made to contain less than the whole truth relative to his supposed invention or discovery.

4. That the alleged invention or discovery described and claimed in Letters Patent No. 20,777, is not and never has been of any utility or value whatsoever.

62 5. That the alleged invention or discovery described and claimed in Letters Patent No. 20,777, has been abandoned to the public.

6. That the alleged invention or discovery described and claimed in Letters Patent No. 20,777, was not, and is not, an invention or discovery, or the proper subject matter of Letters Patent of the United States, and that the same was and is the result of mere mechanical skill and judgment.

63

7. That the alleged invention or discovery described and claimed in Letters Patent No. 20,777, had been, prior to the alleged invention or discovery thereof by the said Zenas Cobb, described and shown in the specifications and drawings, and patented in the following Letters Patent:

Letters Patent of the United States granted to N. McGraw, December 10, 1838, No. 1,030.

64 Letters Patent of the United States granted to John C. Emery, June 20, 1848, No. 5,641.

Letters Patent of the United States granted to J. A. Robson, November 20, 1849, No. 6,893.

Letters Patent of the United States granted to S. Hicock, Aug. 9, 1853, No. 9,919.

Letters Patent of the United States granted to Henry B. Myer, September 19, 1854, No. 11,699.

Letters Patent of the United States granted to T. T. Woodruff, December 2, 1856, No. 16,159.

Letters Patent of the United States granted to T. T. Woodruff, December 2, 1856, No. 16,160.

Letters Patent of the United States granted to J. B. Creighton, May 18, 1858, No. 20,254. 65

Letters Patent of the United States granted to S. C. Case, June 22, 1858, No. 20,622.

English Letters Patent granted to George Hazeldine, March 8, 1855, No. 516.

English Letters Patent granted to Narcisse Leroy, October 9, 1855, No. 2,259.

8. That the said patentee, Zenas Cobb, had surreptitiously and unjustly obtained the Letters Patent No. 20,777 for that which was in fact invented by one Theodore T. Woodruff, now residing in Norristown, Montgomery County, in the State of Pennsylvania, who was using reasonable diligence in adapting and perfecting the same. 66

That the said Theodore T. Woodruff, on or about May, 15, 1859, being, as he claimed to be, and as these respondents believe he was, the original inventor and discoverer of the same, made application to the proper department of the Government of the United States for Letters Patent therefor. 67

That upon examination of the said application by the Commissioner of Patents, it was found and decided that an interference existed between the said patent of Zenas Cobb and the aforesaid application of Theodore T. Woodruff, and the said Commissioner notified the said Woodruff and the said Cobb of the existence of such interference, and ordered and directed them to produce testimony concerning their respective inventions or discoveries. 68

That in pursuance of such decision, such proceedings were thereupon had, that the said Commissioner did decide the question of priority of invention in favor of the said Cobb.

That the said Woodruff, in pursuance of the statute in such case made and provided, and in all respects complying therewith, appealed from the decision of the said Commissioner to one of the assistant Judges of the Circuit Court of the District of Columbia.

69 That both the said Judge and the said Commissioner complied with the requirements of the statute in such case made and provided, and the said Judge reversed the said decision on the evidence produced before the said Commissioner, and decided the question of priority of invention in favor of the said Theodore T. Woodruff, and certified his said proceedings and decision, which decision is entered of record in the Patent Office.

70 That the said Woodruff, in pursuance of the said decision, did obtain Letters Patent of the United States for the said invention or discovery upon his aforesaid application, January 24, 1860, No. 26,942, under the seal of the Patent Office and duly signed by the proper officers, which are now expired; which said application, proceedings and Letters Patent by duly certified copies thereof, here in Court to be produced, will more fully and at large appear.

71 **8½.** That the Commissioner of Patents, in view of the facts set forth and the decision by one of the assistant Judges of the Circuit Court of the District of Columbia, referred to in preceding paragraph 8, had no power under the Acts of Congress, to renew and extend the said Letters Patent, No. 20,777, to Zenas Cobb, and exceeded his jurisdiction in renewing and extending said Letters Patent, and that the renewal and extension thereof, set forth in the bill of complaint, is therefore void.

72 **9.** That the said Zenas Cobb was not the original and first inventor or discover of any material or substantial part of the alleged invention or discovery described and claimed in Letters Patent, No. 20,777, but that the same had been known and used in this country before the date of the alleged invention or discovery thereof by the said Zenas Cobb, that is to say:

At the City of Chambersburg, aforesaid, and on and along the line of the Cumberland Valley Railroad, by the company operating said railroad.

That the same was known to Jacob Shaffer, T.

B. Wood, Daniel O. Gehr, Daniel Hull, A. S. Hull, 73
 Alex. H. McCulloh, G. W. Nitterhouse, O. N. Lull,
 James Adams, John Shaffer, John D. Grier, Jacob
 Hyser, James C. Austin, Imanuel Hale, P. W. Sei-
 bert, John Saunders, George W. Snider, W. D. E.
 Hayes, Daniel McPherson, John McCurdy, John
 Altic, Anthony Byers, Frederick Watts, Edward M.
 Biddle, James M. Allen, William B. Murray, Jacob
 Rhum, John Rhodes, John Wallower, J. H. Bell, J.
 B. Boyd, E. B. Byers, William Murray, William
 Millner Roberts, William Clautice, Joseph F. Tolson, 74
 Lorenzo D. Gorton, Richard Imlay, Jesse W. Deal
 and Joseph M. Miller, aforesaid.

Also at the towns of Piermont and Port Jervis
 aforesaid, and on and along the line of the New
 York and Erie Railroad, intermediate between said
 towns, by the company operating said railroad.

That the same was known to John D. Brower,
 Henry Ayers, Joseph F. Tolson, Calvin A. Smith,
 Levi H. Coover, W. E. Rutter, and Henry L. Brown,
 aforesaid. 75

Also at the cities of Philadelphia and Baltimore,
 aforesaid, and on and along the line of the Philadel-
 phia, Wilmington and Baltimore Railroad, interme-
 diate between those cities, by the company operating
 said railroad.

That the same was known to Joseph F. Tolson,
 John B. Hill, Richard Imlay, Samuel Harlan, Jr.,
 Thomas W. Bowers, James Elliott, Joseph Frist, and
 Jacob S. Shryack, aforesaid.

Also at the cities of Richmond and Fredericks- 76
 burg aforesaid, and on and along the line of the
 Richmond, Fredericksburg and Potomac Railroad,
 intermediate between those cities; also at the town
 of Gordonsville, Orange County and Hanover Junc-
 tion, Hanover County, State of Virginia, and on and
 along the line of the Louisa Railroad, intermediate
 between those towns, by the company operating
 said railroads.

That the same was known to Stephen W. Worden,

- 77 Robert P. Davis, W. N. Bragg, Stephen Hunter, Warner Lindsay, Charles Hartwell, Ivory P. Hodgdon, H. D. Bird, and A. B. Adams, aforesaid.

Also at the cities of Petersburg and Weldon, aforesaid, and on and along the line of the Petersburg Railroad (sometimes called the Petersburg and Roanoke Railroad), intermediate between those cities, by the company operating said railroad.

Also at the car works of Betts, Pusey & Harlan aforesaid.

- 78 That the same was known to Alexander Wright, William C. Lumsden, H. D. Bird, William C. Butler, Thomas W. Sykes, John H. Harrison, Richard Graves, Mrs. Ann E. Stiles, William H. McGee, William Ettenger, Samuel Harlan, Jr., E. I. Thomas, and Thomas W. Bowers, aforesaid.

Also at the cities of Baltimore and Frederick, aforesaid, and on and along the line of the Baltimore and Ohio Railroad, intermediate between those cities, by the company operating said railroad.

- 79 That the same was known to Jacob S. Shryack, Orlando G. White, James Reeves, Hiram Ensor, James Murray, and Samuel T. Hayes, aforesaid.

10. That the alleged invention or discovery described and claimed in Letters Patent No. 20,777, had been in public use and on sale in this country for more than two years before the application of the said Zenas Cobb for the original Letters Patent therefor, with his consent and allowance; that is to say:

- 80

At the towns of Piermont and Port Jervis, aforesaid, and on and along the line of the New York and Erie Railroad, now the New York, Lake Erie and Western Railroad, intermediate between those towns, by the company operating said railroad.

That the same was known to John D. Brower, Henry Ayres, Joseph F. Tolson, W. E. Rutter, Calvin A. Smith, Levi H. Coover, and Henry L. Brown, aforesaid.

Also at the city of Chambersburg, aforesaid, and on and along the line of the Cumberland Valley Railroad, by the company operating said railroad. 81

That the same was known to Jacob Shaffer, T. B. Wood, Daniel O. Gehr, Daniel Hull, A. S. Hull, Alex. H. McCulloh, G. W. Nitterhouse, O. N. Lull, James Adams, John Shaffer, John D. Grier, Jacob Hyser, James C. Austin, Imanuel Hale, P. W. Siebert, John Saunders, George W. Snider, W. D. E. Hayes, Daniel McPherson, John McCurdy, John Altic, Anthony Byers, Frederick Watts, Edward M. Biddle, James M. Allen, Wm. B. Murray, Jacob Rhum, John Rhodes, John Wallower, J. H. Bell, J. B. Boyd, E. B. Byers, Lorenzo D. Gorton, Richard Imlay, William Murray, William Millner Roberts, William Clautice, Joseph F. Tolson, Jesse W. Deal, and Joseph M. Miller, aforesaid. 82

Also at the cities of Philadelphia and Baltimore, aforesaid, and on and along the line of the Philadelphia, Wilmington and Baltimore Railroad, intermediate between those cities, by the company operating said railroad. 83

That the same was known to Joseph F. Tolson, John B. Hill, Richard Imlay, Jacob Frist, Samuel Harlan, Jr., Thomas W. Bowers, James Elliott, and Jacob S. Shryack, aforesaid.

Also at the cities of Richmond and Fredericksburg aforesaid, and on and along the line of the Richmond, Fredericksburg and Potomac Railroad, intermediate between those cities; also at the towns of Gordonsville, Orange County, and Hanover Junction, Hanover County, State of Virginia, and on and along the line of the Louisa Railroad, intermediate between those towns, by the company operating said railroads. 84

That the same was known to Stephen W. Worden, Robert P. Davis, W. N. Bragg, Stephen Hunter, Warner Lindsay, Charles Hartwell, Ivory P. Hodgdon, H. D. Bird, and A. B. Adams, aforesaid.

Also at the cities of Petersburg and Weldon, aforesaid, and on and along the line of the Petersburg

- 85 Railroad (sometimes called the Petersburg and Roanoke Railroad), intermediate between those cities, by the company operating said railroad.

Also at the car works of Betts, Pusey & Harlan, aforesaid.

- That the same was known to Alexander Wright, William C. Lumsden, H. D. Bird, William C. Butler, Thomas W. Sykes, John H. Harrison, Richard Graves, Mrs. Ann E. Styles, William H. McGee, William Ettenger, Samuel Harlan, Jr., E. I. Thomas, 86 and Thomas W. Bowers, aforesaid.

Also at the cities of Baltimore and Frederick, aforesaid, and on and along the line of the Baltimore and Ohio Railroad, intermediate between those cities, by the company operating said railroad.

That the same was known to Jacob S. Shryack, Orlando G. White, James Reeves, Hiram Ensor, James Murray and Samuel J. Hayes, aforesaid.

87

IV.

- These respondents, further answering, say; that upon information and belief alone they admit that certain other Letters Patent of the United States, bearing date May 31, 1859, No. 24,257, for an alleged improvement in combined seats and couches for railroad cars, were obtained by one Theodore T. Woodruff, and were extended for seven years from the expiration of the original term thereof; but these 88 respondents, on information and belief, deny that said T. T. Woodruff was the original and first inventor of the alleged improvements described in said Letters Patent; and that the same had not been known or used before his alleged invention thereof; and that the same had not been in public use for more than two years before his application for Letters Patent therefor with his consent and allowance; and that the requirements of law were complied with in obtaining said Letters Patent and extension, and that said Letters Patent and extension were

granted in accordance with the then existing Acts of Congress, all as alleged in the bill of complaint. 89

These respondents, further answering on information and belief, answer and say:

1. That the written description accompanying said Letters Patent No. 24,257 does not explain the principle of the alleged invention or discovery, and the best mode in which the patentee has contemplated applying that principle so as to distinguish it from other inventions. 90

2. That the patentee, in the specification of said Letters Patent No. 24,257 has not particularly pointed out and distinctly claimed the part, improvement or combination which he claims as his invention or discovery.

3. That for the purpose of deceiving the public, the description and specification filed by the patentee of said Letters Patent No. 24,257, in the Patent Office was made to contain less than the whole truth relative to his alleged invention or discovery. 91

4. That the alleged invention or discovery described and claimed in Letters Patent No. 24,257 is not and never has been of any utility or value whatsoever.

5. That the alleged invention or discovery described and claimed in Letters Patent No. 24,257 has been abandoned to the public. 92

6. That the alleged invention or discovery described and claimed in Letters Patent No. 24,257 was not, and is not, an invention or discovery, or the proper subject matter of Letters Patent of the United States, and that the same was and is the result of mere mechanical skill and judgment.

7. That the alleged invention or discovery described and claimed in Letters Patent No. 24,257 had been, prior to the alleged invention or discovery

- 93 thereof by the said Theodore T. Woodruff, described and shown in the specifications and drawings, and patented in the following Letters Patent, to wit:

Letters Patent of the United States granted to N. McGraw, December 10, 1838, No. 1,030.

Letters Patent of the United States granted to John C. Emery June 20, 1848, No. 5,641.

Letters Patent of the United States granted to J. A. Robson November 20, 1849, No. 6,893.

- 94 Letters Patent of the United States granted to S. Hicock August 9, 1853, No. 9,919.

Letters Patent of the United States granted to H. B. Meyer September 19, 1854, No. 11,699.

Letters Patent of the United States granted to T. T. Woodruff December 2, 1856, Nos. 16,159 and 16,160.

Letters Patent of the United States granted to J. B. Creighton May 18, 1858, No. 20,254.

Letters Patent of the United States granted to S. C. Case June 22, 1858, No. 20,622.

- 95 Letters Patent of the United States granted to Zenas Cobb July 6, 1858, No. 20,777.

Letters Patent of the United States granted to C. L. Harrington August 3, 1858, No. 21,070.

Letters Patent of the United States granted to Eli Wheeler August 3, 1858, No. 21,099.

Letters Patent of the United States granted to K. Freeman August 31, 1858, No. 21,331.

Letters Patent of the United States granted to C. M. Mann August 31, 1858, No. 21,352.

- 96 Letters Patent of the United States granted to Myers & Furniss September 7, 1858, No. 21,436.

Letters Patent of the United States granted to J. B. Creighton September 28, 1858, No. 21,600.

Letters Patent of the United States granted to D. M. Lawrence November 9, 1858, No. 22,025.

Letters Patent of the United States granted to P. B. Green December 21, 1858, No. 22,364.

Letters Patent of the United States granted to N. Thompson, Jr., December 28, 1858, No. 22,462.

Letters Patent of the United States granted to Luce and Morrison January 4, 1859, No. 22,506.

Letters Patent of the United States granted to T. E. McNeill May 24, 1859, No. 24,136, and May 31, 1859, No. 24,225. 97

English Letters Patent granted to George Hazeldine, March 8, 1855, No. 516.

English Letters Patent granted to Narcisse Leroy October 9, 1855, No. 2,259.

8. That the said Theodore T. Woodruff was not the original and first inventor or discoverer of any material or substantial part of the alleged invention or discovery, described and claimed in the Letters Patent, No. 24,257, but that the same had been known and used in this country, before the date of the alleged invention or discovery thereof by the said Theodore T. Woodruff, that is to say : 98

At the towns of Piermont, and Port Jervis, aforesaid, and on and along the line of the New York and Erie Railroad, now the New York, Lake Erie and Western Railroad, intermediate between those towns, by the company operating said railroad. 99

That the same was known to John D. Brower, Henry Ayres, Joseph F. Tolson, Calvin A. Smith, Levi H. Coover, W. E. Rutter and Henry L. Brown, aforesaid.

Also at the city of Chambersburg aforesaid, and on and along the line of the Cumberland Valley Railroad, by the company operating said railroad.

That the same was known to Jacob Shaffer, T. B. Wood, Daniel O. Gehr, Daniel Hull, A. S. Hull, Alex. H. McCulloh, G. W. Nitterhouse, O. N. Lull, James Adams, John Shaffer, John D. Grier, Jacob Hyser, James C. Austin, Imanuel Hale, P. W. Siebert, John Saunders, George W. Snider, W. D. E. Hayes, Daniel McPherson, John McCurdy, John Altic, Anthony Byers, Frederick Watts, Edward M. Biddle, James M. Allen, William B. Murray, Jacob Rhum, John Rhodes, John Wallower, J. H. Bell, J. B. Boyd, E. B. Byers, William Murray, William Millner Roberts, William Clautice, Lorenzo D. Gorton, Richard Imlay, Joseph F. Tolson, Jesse W. Deal and Joseph M. Miller, aforesaid 100

- 101 Also at the cities of Philadelphia and Baltimore, aforesaid, and on and along the line of the Philadelphia, Wilmington and Baltimore Railroad, by the company operating said railroad.

That the same was known to Thomas W. Bowers, James Elliott, Samuel Harlan, Jr., Joseph F. Tolson, John B. Hill, G. H. Huddell and Jacob Frist, aforesaid.

- Also at the cities of Richmond and Fredericksburg, aforesaid, and on and along the line of the Richmond, Fredericksburg and Potomac Railroad, intermediate between those cities; also at the towns of Gordonsville, Orange County and Hanover Junction, Hanover County, State of Virginia, and on and along the line of the Louisa Railroad, intermediate between those towns, by the company operating said railroads.
- 102

- That the same was known to Stephen W. Worden, Robert P. Davis, W. N. Bragg, Stephen Hunter, Warner Lindsay, Charles Hartwell, Ivory P. Hodgdon, H. D. Bird, and A. B. Adams, aforesaid.
- 103

Also at the cities of Petersburg and Weldon, aforesaid, and on and along the line of the Petersburg Railroad (sometimes called the Petersburg and Roanoke Railroad), intermediate between those cities, by the company operating said railroad.

Also at the car works of Betts, Pusey & Harlan aforesaid.

- That the same was known to Alexander Wright, William C. Lumsden, H. D. Bird, William C. Butler, Thomas W. Sykes, John H. Harrison, Richard Graves, Mrs. Ann E. Stiles, William H. McGee, William Ettenger, Samuel Harlan, Jr., E. I. Thomas, and Thomas W. Bowers, aforesaid.
- 104

Also at the cities of Baltimore and Frederick, aforesaid, and on and along the line of the Baltimore and Ohio Railroad, intermediate between those cities, by the company operating said railroad.

That the same was known to Jacob S. Shryack, Orlando G. White, James Reeves, Hiram Ensor, James Murray and Samuel J. Hayes, aforesaid.

Also at the City of Toledo, Lucas County, State of Ohio, and on and along the line of the Toledo, Wabash and Western Railway, by John M. Gillette and George S. Allen. 105

Also at the car works of Morrill and Bowers in the City of Cleveland, Cuyahoga County, State last aforesaid.

That the same as known to D. K. Wilson, Patrick Watson, G. B. Bowers, Louis Zimmerman, Joseph Miller, Frank Bluem, and John M. Gillette, all residing in Cleveland, aforesaid; George S. Allen, residing in New Haven, New Haven County, State of Connecticut; and George W. Morrill, residing in Amesbury, Essex County, State of Massachusetts. 106

Also at the cities of Albany and New York aforesaid, and on and along the line of the New York Central Railroad, intermediate between those cities, by Webster Wagner, George B. Gates, Morgan Gardner, and Theodore N. Parmalee, now deceased.

Also at the car works of Eaton, Gilbert & Co., in Troy, Rensselaer County, State of New York. 107

That the same was known to Webster Wagner, residing at Palatine Bridge, Montgomery County, State of New York; George B. Gates, now deceased, formerly residing in Buffalo, Erie County, State of New York; Uri Gilbert, Walter R. Bush and B. F. Manier, residing in Troy, aforesaid, and Stephen W. Worden, aforesaid.

Also at the cities of Milwaukee, Milwaukee County, and La Crosse, La Crosse County, State of Wisconsin, and on and along the line of the La Crosse and Milwaukee Railroad, now the Chicago, Milwaukee and St. Paul Railroad, intermediate between those cities, by Charles F. Rice, R. D. Jennings, John M. Kimball and Samuel Greeley. 108

That the same was known to Charles F. Rice, residing in Evanston, near Chicago, Cook County, aforesaid; John Bailie and William E. Kittredge, both residing in Milwaukee, aforesaid; and John C. Fisk and William M. Page, residing in Springfield aforesaid.

109 And was shown and described in the application of the aforesaid D. K. Wilson for Letters Patent of the United States therefor, filed in the Patent Office, September 20, 1858.

9. That the alleged invention or discovery described and claimed in Letters Patent No. 24,257 had been in public use and on sale in this country for more than two years before the application of the said Theodore T. Woodruff for the original Letters Patent therefor, with his consent and allowance;
110 that is to say:

At the towns of Piermont and Port Jervis aforesaid, and on and along the line of the New York and Erie Railroad, now the New York, Lake Erie and Western Railroad, intermediate between those towns, by the company operating said railroad.

That the same was known to John D. Brower, Henry Ayers, Joseph F. Tolson, Calvin A. Smith, Levi H. Coover, W. E. Rutter, and Henry L. Brown, aforesaid.

111 Also at the City of Chambersburg, aforesaid, and on and along the line of the Cumberland Valley Railroad, by the company operating said railroad.

That the same was known to Jacob Shaffer, T. B. Wood, Daniel O. Gehr, Daniel Hull, A. S. Hull, Alex. H. McCulloh, G. W. Nitterhouse, O. N. Lull, James Adams, John Shaffer, John D. Grier, Jacob Hyser, James C. Austin, Imanuel Hale, P. W. Seibert, John Saunders, George W. Snider, W. D. E. Hayes, Daniel McPherson, John McCurdy, John Al-
112 tic, Anthony Byers, Frederick Watts, Edward M. Biddle, James M. Allen, William B. Murray, Jacob Rhum, John Rhodes, John Wallower, J. H. Bell. J. B. Boyd, E. B. Byers, Lorenzo D. Gorton, Richard Imlay, William Murray, William Millner Roberts, William Clautice, Joseph F. Tolson, Jesse W. Deal and Joseph M. Miller, aforesaid.

Also at the cities of Philadelphia and Baltimore, aforesaid, and on and along the line of the Philadelphia, Wilmington and Baltimore Railroad, inter-

mediate between those cities, by the company operating said railroad. 113

That the same was known to Joseph F. Tolson, John B. Hill, Jacob Frist, Samuel Harlan, Jr., Thomas W. Bowers, James Elliott, G. H. Huddell and Jacob S. Shryack, aforesaid.

Also at the cities of Richmond and Fredericksburg, aforesaid, and on and along the line of the Richmond, Fredericksburg and Potomac Railroad, intermediate between those cities; also at the towns of Gordonsville, Orange County and Hanover Junction, Hanover County, State of Virginia, and on and along the line of the Louisa Railroad, intermediate between those towns, by the company operating said railroads. 114

That the same was known to Stephen W. Worden, Robert P. Davis, W. N. Bragg, Stephen Hunter, Warner Lindsay, Charles Hartwell, Ivory P. Hodgdon, H. D. Bird, and A. B. Adams, aforesaid.

Also at the cities of Petersburg and Weldon, aforesaid, and on and along the line of the Petersburg Railroad (sometimes called the Petersburg and Roanoke Railroad), intermediate between those cities, by the company operating said railroad. 115

Also at the car works of Betts, Pusey & Harlan, aforesaid.

That the same was known to Alexander Wright, William C. Lumsden, H. D. Bird, William C. Butler, Thomas W. Sykes, John H. Harrison, Richard Graves, Mrs. Ann E. Stiles, William H. McGee, William Ettenger, Samuel Harlan, Jr., E. I. Thomas and Thomas W. Bowers, aforesaid. 116

Also at the cities of Baltimore and Frederick, aforesaid, and on and along the line of the Baltimore and Ohio Railroad, intermediate between those cities, by the company operating said railroad.

That the same was known to Jacob S. Shryack, Orlando G. White, James Reeves, Hiram Ensor, James Murray and Samuel J. Hayes, aforesaid.

Also at the City of Toledo aforesaid, and on and

117 along the line of the Toledo, Wabash and Western Railroad, by John M. Gillette and George S. Allen.

Also at the car works of Morrill & Bowers, aforesaid.

That the same was known to D. K. Wilson, Patrick Watson, G. B. Bowers, Louis Zimmermann, Joseph Miller, Frank Bluem, John M. Gillette, George S. Allen and George W. Morrill, aforesaid.

Also at the cities of Albany and New York aforesaid, and on and along the line of the New York
118 Central Railroad, intermediate between those cities, by Webster Wagner, George B. Gates, Morgan Gardner and Theodore N. Parmalee, now deceased.

Also at the car works of Eaton, Gilbert & Co., aforesaid.

That the same was known to Webster Wagner, George B. Gates, Uri Gilbert, Walter R. Bush, B. F. Manier and Stephen W. Worden, aforesaid.

Also at the cities of Milwaukee and La Crosse aforesaid, and on and along the line of the La
119 Crosse and Milwaukee Railroad, now the Chicago, Milwaukee and St. Paul Railroad, intermediate between those cities, by Charles F. Rice, R. D. Jennings, John M. Kimball and Samuel Greeley.

That the same was known to Charles F. Rice, John Bailie, William E. Kittredge, John C. Fisk and William Page, aforesaid.

10. That no car seats or couches such as are described and shown in the drawings and specifications of the Letters Patent No. 24,257 were constructed or used prior to the filing of the original application for said Letters Patent in the Patent Office, and before the date of the grant of said Letters Patent, or since; and no car seats or couches could be made to operate practically or usefully constructed in accordance with the said Letters Patent; and the alleged invention or discovery as embodied in the said Letters Patent was not, and is not, a useful invention or discovery, within the meaning of the law, or such
120

as was, or is, the proper subject matter of Letters Patent. 121

V.

These respondents further answering, say; that upon information and belief alone they admit that certain other Letters Patent of the United States, bearing date September 20, 1859, No. 25,499 for an alleged improvement in sleeping car seats, were obtained by one Eli Wheeler; that they were extended for seven years from the expiration of the original term thereof; that they were reissued September 21, 1875, reissue No. 6,651; but these respondents on information and belief deny that said Eli Wheeler was the original and first inventor of the alleged improvements described in said original and reissued Letters Patent, and that the same had not been known or used before his alleged invention thereof; and that the same had not been in public use and on sale for more than two years before the application for his original Letters Patent therefor, with his consent and allowance; and that the requirements of law were complied with in obtaining said original Letters Patent, extension and reissue thereof; and that the reissue was obtained for good and lawful cause and for the same invention as that shown in the original Letters Patent; and that the said reissue and extension were granted in accordance with the then existing Acts of Congress, all as alleged in the bill of complaint. 122 123 124

These respondents, further answering on information and belief, answer and say:

1. That the written description accompanying the reissued Letters Patent, reissue No. 6,651, does not explain the principle of the alleged invention or discovery, and the best mode in which the patentee has contemplated applying that principle so as to distinguish it from other inventions.

125 **2.** That the patentee of reissued Letters Patent, reissue No. 6,651, in his specification has not particularly pointed out and distinctly claimed the part, improvement or combination which he claims as his invention or discovery.

126 **3.** That the original Letters Patent were not inoperative or invalid by reason of a defective or insufficient specification, or by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new; and were not in any degree inoperative by reason of any inadvertence, accident or mistake; and the same were not surrendered nor were reissued Letters Patent, reissue No. 6,651, issued in lieu thereof for good and lawful cause.

127 **4.** That reissued Letters Patent, reissue No. 6,651, are not for the same alleged invention or discovery as was patented, or attempted to be patented, in the original Letters Patent granted and issued to the said Eli Wheeler, Sept. 20, 1859, No. 25,499.

128 **5.** That reissued Letters Patent, reissue No. 6,651, were fraudulently obtained, for the purpose of including therein inventions or discoveries constituting new matter, not shown or described in the original application or patent of the said Eli Wheeler, or in the models or drawings, or in any matters or things accompanying the same; and that they were fraudulently intended or attempted to be obtained for the purpose of introducing ambiguous claims, and for that which was not in fact patentable or the subject matter of invention, by means of which to terrify timid people, and which could be, or seem to be, capable of being construed as the exigency of any particular case might suggest or seem to render advantageous to the complainants, and of suppressing or appropriating the inventions of other persons.

6. That the obtaining of said reissued Letters Patent, reissue No. 6,651, was a fraudulent attempt

to expand a simple invention of distinct devices into all-embracing claims, calculated by their wide generalization and ambiguous language to discourage further invention in the same department of industry, and by a multiplication of nebulous claims to deceive and mislead the public. 129

7. That for the purpose of deceiving the public, the description and specification filed by the patentee of reissued Letters Patent, reissue No. 6,651, in the Patent Office, was made to contain less than the whole truth relative to his supposed invention or discovery. 130

8. That the alleged invention or discovery described and claimed in reissued Letters Patent, reissue No. 6,651, is not and never has been of any utility or value whatsoever.

9. That the alleged invention or discovery described and claimed in reissued Letters Patent, reissue No. 6,651, has been abandoned to the public. 131

10. That the alleged invention or discovery described and claimed in reissued Letters Patent, reissue No. 6,651, was not, and is not, an invention or discovery or the proper subject matter of Letters Patent of the United States; and that the same was and is the result of mere mechanical skill and judgment.

11. That the alleged invention or discovery described and claimed in reissued Letters Patent, reissue No. 6,651, had been, prior to the alleged invention or discovery thereof by the said Eli Wheeler, described and shown in the specifications and drawings and patented in the following Letters Patent: 132

Letters Patent of the United States granted to N. McGraw December 10, 1838, No. 1,030.

Letters Patent of the United States granted to J. A. Robson November 20, 1849, No. 6,893.

Letters Patent of the United States granted to J. C. Emery June 20, 1848, No. 4,641.

- 133 Letters Patent of the United States granted to A. B. Buell May 11, 1852, No. 8,935.
 Letters Patent of the United States granted to Henry B. Myer September 19, 1854, No. 11,699.
 Letters Patent of the United States granted to T. T. Woodruff December 2, 1856, Nos. 16,159, and 16,160.
 Letters Patent of the United States granted to J. B. Creighton May 18, 1858, No. 20,254.
 Letters Patent of the United States granted to S. C. Case June 22, 1858, No. 20,622.
- 134 Letters Patent of the United States granted to Z. Cobb July 6, 1858, No. 20,777.
 Letters Patent of the United States granted to C. L. Harrington August 3, 1858, No. 21,070.
 Letters Patent of the United States granted to E. Wheeler August 3, 1858, No. 21,099.
 Letters Patent of the United States granted to K. Freeman August 31, 1858, No. 21,331.
 Letters Patent of the United States granted to C. M. Mann August 31, 1858, No. 21,352.
- 135 Letters Patent of the United States granted to Myers & Furniss September 7, 1858, No. 21,436.
 Letters Patent of the United States granted to J. B. Creighton September 28, 1858, No. 21,600.
 Letters Patent of the United States granted to J. W. Sibbet November 2, 1858, No. 21,985.
 Letters Patent of the United States granted to D. M. Lawrence November 9, 1858, No. 22,025.
 Letters Patent of the United States granted to P. B. Green December 21, 1858, No. 22,364.
- 136 Letters Patent of the United States granted to Luce & Morrison, January 4, 1859, No. 22,506.
 Letters Patent of the United States granted to T. C. McNeill May 24, 1859, No. 24,136, and May 31, 1859, No. 24,255.
 Letters Patent of the United States granted to T. T. Woodruff May 31, 1859, No. 24,257.
 Letters Patent of the United States granted to E. C. Knight, June 28, 1859, No. 24,563.

Letters Patent of the United States granted to R. Dirks, August 9, 1859, No. 24,998. 137

English Letters Patent granted to George Hazeldine March 8, 1855, No. 516.

English Letters Patent granted to Narcisse Leroy October 9, 1855, No. 2,259.

12. That the alleged invention or discovery described and claimed in reissued Letters Patent, re-issue, No. 6,651, had been, prior to the alleged invention or discovery thereof by the said Eli Wheeler, described and shown in the following printed publication: 138

The *Scientific American*, Volume XIII., number 48, page 377, published in New York City, by Munn & Company, August 7, 1858.

13. That the patentee, Eli Wheeler, had surreptitiously and unjustly obtained the original Letters Patent for that which was in fact invented by one Rudolph Dirks, now residing in Summeytown, Montgomery County, State of Pennsylvania, who was using reasonable diligence in adopting and perfecting the same. 139

That the said Rudolph Dirks, on or about June 24, 1859, being, as he claimed to be, and as these respondents believe he was, the original inventor and discoverer of the same, made application to the proper department of the Government of the United States for Letters Patent therefor.

That the said Rudolph Dirks, upon due proceedings had, did obtain Letters Patent therefor, upon his aforesaid application, August 9, 1859, No. 24,998, under the seal of the Patent Office, and duly signed by the proper officers, which are now expired; which said application and Letters Patent, by duly certified copies thereof, here in Court to be produced, will more fully and at large appear. 140

14. That the said Eli Wheeler was not the original and first inventor or discoverer of any material or substantial part of the alleged invention or dis-

- 141 covery described and claimed in the reissued Letters Patent, reissue No. 6,651, but that the same had been known and used in this country before the date of the alleged invention or discovery of the said Eli Wheeler, that is to say:

At the towns of Piermont and Port Jervis aforesaid, and on and along the line of the New York and Erie Railroad, now the New York, Lake Erie and Western Railroad, intermediate between those towns, by the company operating said railroad.

- 142 That the same was known to John D. Brower, Henry Ayers, Joseph F. Tolson, Calvin A. Smith, Levi H. Coover, W. E. Rutter and Henry L. Brown, aforesaid.

Also at the City of Chambersburg aforesaid, and on and along the line of the Cumberland Valley Railroad by the company operating said railroad.

That the same was known to Jacob Shaffer, T. B. Wood, Daniel O. Gehr, Daniel Hull, A. S. Hull, Alex. H. McCulloh, G. W. Nitterhouse, O. N. Lull,

- 143 James Adams, John Shaffer, John D. Grier, Jacob Hyser, James C. Austin, Imanuel Hale, P. W. Seibert, John Saunders, George W. Snider, W. D. E. Hayes, Daniel McPherson, John McCurdy, John Altic, Anthony Byers, Frederick Watts, Edward M. Biddle, James M. Allen, William B. Murray, Jacob Rhum, John Rhodes, John Wallower, J. H. Bell, J. B. Boyd, E. B. Byers, Lorenzo D. Gorton, William Millner Roberts, William Clautice, Richard Imlay, William Murray, Joseph F. Tolson, Jesse W. Deal
- 144 and Joseph M. Miller, aforesaid.

Also at the cities of Philadelpnia and Baltimore aforesaid, and on and along the line of the Philadelphia, Wilmington and Baltimore Railroad, intermediate between those cities, by the company operating said railroad.

That the same was known to Joseph F. Tolson, John B. Hill, Jacob Frist, Samuel Harlan, Jr., Thomas W. Bowers, James Elliott, G. H. Huddell and Jacob S. Shryack, aforesaid.

Also at the cities of Richmond and Fredericksburg, aforesaid, and on and along the line of the Richmond, Fredericksburg and Potomac Railroad, intermediate between those cities; also at the towns of Gordonsville, Orange County, and Hanover Junction, Hanover County, State of Virginia, and on and along the line of the Louisa Railroad, intermediate between those towns, by the company operating said railroads. 145

That the same was known to Stephen W. Worden, Robert P. Davis, W. N. Bragg, Stephen Hunter, Warner Lindsay, Charles Hartwell, Ivory P. Hodgdon, H. D. Bird, and A. B. Adams, aforesaid. 146

Also at the cities of Petersburg and Weldon, aforesaid, and on the line of the Petersburg Railroad (sometimes called the Petersburg and Roanoke Railroad), intermediate between those cities, by the company operating said railroad.

Also at the car works of Betts, Pusey & Harlan, aforesaid.

That the same was known to Alexander Wright, William C. Lumsden, H. D. Bird, William C. Butler, Thomas W. Sykes, John H. Harrison, Richard Graves, Mrs. Ann E. Stiles, William H. McGee, William Ettenger, Samuel Harlan, Jr., E. I. Thomas and Thomas W. Bowers, aforesaid. 147

Also at the cities of Baltimore and Frederick aforesaid, and on and along the line of the Baltimore and Ohio Railroad, intermediate between those cities, by the company operating said railroad.

That the same was known to Jacob S. Shryack, Orlando G. White, James Reeves, Hiram Ensor, James Murray, and Samuel J. Hayes aforesaid. 148

Also at the city of Toledo aforesaid, and on and along the line of the Toledo, Wabash and Western Railroad, by John M. Gillette and George S. Allen.

Also at the car works of Morrill & Bowers, aforesaid.

That the same was known to D. K. Wilson, Patrick Watson, G. B. Bowers, Louis Zimmermann,

- 149 Joseph Miller, Frank Bluem, John M. Gillette, George S. Allen, and George W. Morrill, aforesad.

Also at the cities of Albany and New York afore said, and on and along the line of the New York Central Railroad, intermediate between those cities, by Webster Wagner, George B. Gates, Morgan Gardner and Theodore N. Parmalee, now deceased.

Also at the car works of Eaton, Gilbert & Co., aforesaid.

- That the same was known to Webster Wagner,
150 George B. Gates, Uri Gilbert, Walter R. Bush, B. F. Manier and Stephen W. Worden, aforesaid.

Also at the cities of Milwaukee and LaCrosse aforesaid, and on and along the line of the LaCrosse and Milwaukee Railroad, now the Chicago, Milwaukee and St. Paul Railroad, intermediate between those cities, by Charles F. R. Rice, D. Jennings, John M. Kimball and Samuel Greely.

- That the same was known to Charles F. Rice,
151 John Bailie, William E. Kittredge, John C. Fisk and William Page, aforesaid.

And was shown and described in the application of the aforesaid D. K. Wilson for Letters Patent of the United States therefor, filed in the Patent Office, September 20, 1858.

- 15.** That the alleged invention or discovery described and claimed in reissued Letters Patent, reissue No. 6,651, had been in public use or on sale in this country for more than two years before the
152 application of the said Eli Wheeler for the original Letters Patent therefor, with his consent and allowance, that is to say:

At the towns of Piermont and Port Jervis aforesaid, and on and along the line of the New York and Erie Railroad, now the New York, Lake Erie and Western Railroad, intermediate between those towns, by the company operating said railroad.

That the same was known to John D. Brower, Henry Ayers, Joseph F. Tolson, Calvin A. Smith,

Levi H. Coover, W. E. Rutter, and Henry L. 153
Brown, aforesaid.

Also at the city of Chambersburg aforesaid, and on and along the line of the Cumberland Valley Railroad, by the company operating said railroad.

That the same was known to Jacob Shaffer, T. B. Wood, Daniel O. Gehr, Daniel Hull, A. S. Hull, Alex. H. McCulloh, G. W. Nitterhouse, O. N. Lull, James Adams, John Shaffer, John D. Grier, Jacob Hyser, James C. Austin, Imanuel Hale, P. W. Seibert, John Saunders, George W. Snider, W. 154
D. E. Hayes, Daniel McPherson, John McCurdy, John Altic, Anthony Byers, Frederick Watts, Edward M. Biddle, James M. Allen, William B. Murray, Jacob Rhum, John Rhodes, John Wallower, J. H. Bell, J. B. Boyd, E. B. Byers, Lorenzo D. Gorton, Richard Imlay, William Murray, William Millner Roberts, William Clautice, Joseph F. Tolson, Jesse W. Deal and Joseph M. Miller, aforesaid.

Also at the cities of Philadelphia and Baltimore aforesaid, and on and along the line of the Phila- 155
delphia, Wilmington and Baltimore Railroad, intermediate between those cities, by the company operating said railroad.

That the same was known to Joseph F. Tolson, John B. Hill, Jacob Frist, Samuel Harlan, Jr., Thomas W. Bowers, James Elliott, Jacob S. Shryack, and G. H. Huddell, aforesaid.

Also at the cities of Richmond and Fredericksburg aforesaid, and on and along the line of the Richmond, Fredericksburg and Potomac Railroad, 155a
intermediate between those cities; also at the towns of Gordonsville, Orange County and Hanover Junction, Hanover County, State of Virginia, and on and along the line of the Louisa Railroad, intermediate between those towns, by the company operating said railroads.

That the same was known to Stephen W. Worden, Robert P. Davis, W. N. Bragg, Stephen Hunter,

- 156 Warner Lindsay, Charles Hartwell, Ivory P. Hodgdon, H. D. Bird and A. B. Adams, aforesaid.

Also, at the cities of Petersburg and Weldon aforesaid, and on and along the line of the Petersburg Railroad (sometimes called the Petersburg and Roanoke Railroad), intermediate between those cities, by the company operating said railroad.

Also, at the car works of Betts, Pusey & Harlan aforesaid.

- That the same was known to Alexander Wright,
157 William C. Lumsden, H. D. Bird, William C. Butler, Thomas W. Sykes, John H. Harrison, Richard Graves, Mrs. Ann E. Stiles, William H. McGee, William Ettenger, Samuel Harlan, Jr., E. I. Thomas and Thomas W. Bowers, aforesaid.

Also, at the cities of Baltimore and Frederick, aforesaid, and on and along the line of the Baltimore and Ohio Railroad, intermediate between those cities, by the company operating said railroad.

- That the same was known to Jacob S. Shryack,
158 Orlando G. White, James Reeves, Hiram Ensor, James Murray and Samuel J. Hayes, aforesaid.

Also, at the city of Toledo aforesaid, and on and along the line of the Toledo, Wabash and Western Railroad by John M. Gillette and George S. Allen.

Also, at the car works of Morrill & Bowers, aforesaid.

- That the same was known to D. K. Wilson, Patrick Watson, G. B. Bowers, Louis Zimmermann, Joseph Miller, Frank Bluem, John M. Gillette, George
158a S. Allen and George W. Morrill, aforesaid.

Also, at the cities of Albany and New York, aforesaid, and on and along the line of the New York Central Railroad, intermediate between those cities, by Webster Wagner, George B. Gates, Morgan Gardner and Theodore N. Parmalee, now deceased.

Also, at the car works of Eaton, Gilbert & Co., aforesaid.

That the same was known to Webster Wagner, George B. Gates, Uri Gilbert, Walter R. Bush, B. F. Manier and Stephen W. Worden, aforesaid.

Also, at the cities of Milwaukee and La Crosse, 159 aforesaid, and on and along the line of the La Crosse and Milwaukee Railroad, now the Chicago, Milwaukee and St. Paul Railroad, intermediate between those cities, by Charles F. Rice, R. D. Jennings, John M. Kimball and Samuel Greeley.

That the same was known to Charles F. Rice, John Bailie, William E. Kittredge, John C. Fisk and William Page, aforesaid.

160

VI.

These respondents, further answering, say; that upon information and belief alone, they admit that certain other Letters Patent of the United States, bearing date September 19, 1865, No. 49,992, for an alleged improvement in sleeping cars for railroads, were obtained by one Ben Field and one George M. Pullman; that they were reissued February 11, 1868, No. 2,862; that they were again reissued January 5, 1869, No. 3,254; that they were again reissued Sept. 21, 1875, No. 6,648. But these respondents, on information and belief, deny that said George M. Pullman and Ben Field were the first and original and joint inventors of the alleged improvements described in said original and reissued Letters Patent; and that the same had not been known or used before their alleged invention thereof; and that the same had not been in public use and on sale for more than two years before their application for 161a their original Letters Patent therefor, with their consent and allowance; and that the requirements of law were complied with in obtaining said original Letters Patent and reissues thereof; and that the reissues were obtained for good and lawful cause and for the same invention as that contained in the original Letters Patent; and that the said reissues were granted in accordance with the then existing Acts of Congress, as alleged in the bill of complaint.

The respondents, further answering on information and belief, answer and say:

- 162 **1.** That the written description accompanying re-issued Letters Patent, reissue No. 6,648, does not explain the principle of the supposed invention or discovery, and the best mode in which the patentees have contemplated applying that principle so as to distinguish it from other inventions.
- 163 **2.** That the patentees in the specification of reissued Letters Patent, reissue No. 6,648, have not particularly pointed out and distinctly claimed the part, improvement or combination which they claim as their invention or discovery.
- 164 **3.** That the original Letters Patent were not inoperative or invalid by reason of a defective or insufficient specification, or by reason of the patentees claiming as their own invention or discovery more than they had a right to claim as new; and were not in any degree inoperative by reason of any inadvertence, accident or mistake; and the same were not surrendered, nor were reissued Letters Patent, reissue No. 6,648, issued in lieu thereof for good and lawful cause.
- 164a **4.** That reissued Letters Patent, reissue No. 6,648, are not for the same alleged invention or discovery as was patented or attempted to be patented in the original Letters Patent granted and issued to the said Ben. Field and George M. Pullman, September 19, 1865, No. 49,992.
- 164a **5.** That reissued Letters Patent, reissue No. 6,648, were fraudulently obtained for the purpose of including therein inventions or discoveries constituting new matter, not shown or described in the original application or patent of the said Ben. Field and George M. Pullman, or in the models or drawings, or in any matters or things accompanying the same; and that they were fraudulently intended or attempted to be obtained for the purpose of introducing ambiguous claims, and for that which was not in fact patentable or the subject matter of invention,

by means of which to terrify timid people, and 165
 which could be, or seem to be, capable of being constructed, as the exigency of any particular case might suggest or seem to render advantageous to the complainants, and of suppressing or appropriating the inventions of other persons.

6. That the obtaining of said reissued Letters Patent, reissue No. 6,648, was a fraudulent attempt to expand a simple invention of distinct devices into all-embracing claims, calculated by their wide generalization, and ambiguous language, to discourage 166
 further invention in the same department of industry, and by a multiplication of nebulous claims to deceive and mislead the public.

7. That for the purpose of deceiving the public, the description and specification filed by the patentees of reissued Letters Patent, reissue No. 6,648, in the Patent Office was made to contain less than the whole truth relative to their alleged invention or 167
 discovery.

8. That the alleged invention or discovery described and claimed in reissued Letters Patent, reissue No. 6,648, is not and never has been of any utility or value whatsoever.

9. That the alleged invention or discovery described and claimed in reissued Letters Patent, reissue No. 6,648, has been abandoned to the public. 167a

10. That the alleged invention or discovery described and claimed in reissued Letters Patent, reissue No. 6,648, was not, and is not, an invention or discovery or the proper subject matter of Letters Patent of the United States, and that the same was and is the result of mere mechanical skill and judgment.

11. That the alleged invention or discovery described and claimed in reissued Letters Patent, reissue

- 168 sue No. 6,648, had been, prior to the alleged invention or discovery thereof by the said Ben. Field and George M. Pullman, described and shown and patented in the following Letters Patent:

Letters Patent of the United States, granted to N. McGraw Dec. 10, 1838, No. 1,030.

Letters Patent of the United States, granted to J. A. Robson Nov. 20, 1849, No. 6,893.

Letters Patent of the United States, granted to J. C. Emery June 20, 1848, No. 4,641.

- 169 Letters Patent of the United States granted to A. B. Buell May 11, 1852, No. 8,935.

Letters Patent of the United States granted to Henry B. Myer Sept. 19, 1854, No. 11,699.

Letters Patent of the United States granted to T. T. Woodruff Dec. 2, 1856, Nos. 16,159 and 16,160.

Letters Patent of the United States granted to J. B. Creighton May 18, 1858, No. 20,254.

Letters Patent of the United States granted to S. C. Case June 22, 1858, No. 20,622.

- 170 Letters Patent of the United States granted to Z. Cobb July 6, 1858, No. 20,777.

Letters Patent of the United States granted to C. L. Harrington Aug. 3, 1858, No. 21,070.

Letters Patent of the United States granted to E. Wheeler Aug. 3, 1858, No. 21,099.

Letters Patent of the United States granted to K. Freeman Aug. 31, 1858, No. 21,331.

Letters Patent of the United States granted to C. M. Mann Aug. 31, 1858, No. 21,352.

- 170a Letters Patent of the United States granted to Myers & Furniss Sept. 7, 1858, No. 21,436.

Letters Patent of the United States granted to J. B. Creighton Sept. 28, 1858, No. 21,600.

Letters Patent of the United States granted to J. W. Sibbet Nov. 2, 1858, No. 21,985.

Letters Patent of the United States granted to D. M. Lawrence Nov. 9, 1858, No. 22,025.

Letters Patent of the United States granted to P. B. Green Dec. 21, 1858, No. 22,364.

Letters Patent of the United States granted to N. Thompson, Jr., December 28, 1858, No. 22,462.

Letters Patent of the United States granted to G. 171
L. Dulaney December 28, 1858, No. 22,471.

Letters Patent of the United States granted to
Luce & Morrison January 4, 1859, No. 22,506.

Letters Patent of the United States granted to W.
M. Baker January 25, 1859, No. 22,693.

Letters Patent of the United States granted to F.
C. Payne and A. Reid April 12, 1859, No. 23,604.

Letters Patent of the United States granted to T.
E. McNeill May 24, 1859, No. 24,136, and May 31,
1859, No. 24,255.

Letters Patent of the United States granted to T. 172
T. Woodruff May 31, 1859, No. 24,257.

Letters Patent of the United States granted to E.
C. Knight June 28, 1859, No. 24,563.

Letters Patent of the United States granted to R.
Dirks Aug. 9, 1859, No. 24,998.

Letters Patent of the United States granted to E.
C. Knight September 27, 1859, No. 25,570.

Letters Patent of the United States granted to E.
Wheeler September 20, 1859, No. 25,499.

Letters Patent of the United States granted to J. 173
Danner October 18, 1859, No. 25, 814.

Letters Patent of the United States granted to T.
T. Woodruff January 24, 1860, No. 26,942.

Letters Patent of the United States granted to E.
C. Knight February 28, 1860, No. 27,297.

Letters Patent of the United States granted to W.
A. Brown July 17, 1860, No. 29,137.

Letters Patent of the United States granted to J.
B. Sutherland August 14, 1860, No. 29,635.

Letters Patent of the United States granted to D. 173a
Pennoyer August 28, 1860, No. 29,813.

Letters Patent of the United States granted to J.
H. Fisher October 23, 1860, No. 30,472.

Letters Patent of the United States granted to
Burke & Sulger October 23, 1860, No. 30,517.

Letters Patent of the United States granted to
Field & Pullman April 5, 1864, No. 42,182.

English Letters Patent granted to George Ha-
zeldine March 8, 1855, No. 516.

- 174 English Letters Patent granted to Narcisse Leroy
Oct. 9, 1855, No. 2,259.

12. That the alleged invention or discovery described and claimed in reissued Letters Patent, reissue No. 6,648, had been, prior to the alleged invention or discovery thereof by the said Ben Field and George M. Pullman, described and shown in the following printed publication :

- 175 The *Scientific American*, Volume V, Number 24,
page 369, New Series, published in New York City
by Munn & Company, December 14, 1861.

- 13.** That the said Ben Field and George M. Pullman were not the original, first and joint inventors of any material or substantial part of the alleged invention or discovery, described and claimed in reissued Letters Patent, reissue No. 6,648, but that the same had been known and used in this country before the date of the alleged invention or discovery of the said Ben Field and George M. Pullman, that is
176 to say:

At the towns of Piermont and Port Jervis aforesaid, and on and along the line of the New York and Erie Railroad, now the New York, Lake Erie and Western Railroad intermediate between those towns, by the company operating said railroad.

- That the same was known to John D. Brower, Henry Ayres, Joseph F. Tolson, Calvin A. Smith, Levi H. Coover, W. E. Rutter and Henry L. Brown, aforesaid.
176a

Also at the City of Chambersburg aforesaid, and on and along the line of the Cumberland Valley Railroad, by the company operating said railroad.

That the same was known to Jacob Shaffer, T. B. Wood, Daniel O. Gehr, Daniel Hull, A. S. Hull, Alex. H. McCulloh, G. W. Nitterhouse, O. N. Lull, James Adams, John Shaffer, John D. Grier, Jacob Hyser, James C. Austin, Imanuel Hale, P. W. Seibert, John Saunders, George W. Snider, W. D. E. Hayes, Daniel McPherson, John McCurdy, John Altic, Anthony Byers, Frederick Watts, Edward M.

Biddle, James M. Allen, William B. Murray, Jacob 177
 Rhum, John Rhodes, John Wallower, J. H. Bell,
 J. B. Boyd, E. B. Byers, Lorenzo D. Gorton, Wil-
 liam Millner Roberts, William Clautice, Richard
 Imlay, William Murray, Joseph F. Tolson, Jesse W.
 Deal and Joseph M. Miller, aforesaid.

Also all the cities of Philadelphia and Baltimore,
 aforesaid, and on and along the line of the Philadel-
 phia, Wilmington and Baltimore Railroad, interme-
 diate between those cities, by the company operat-
 ing said railroad. 178

That the same was known to Joseph F. Tolson,
 John B. Hill, Jacob Frist, Samuel Harlan, Jr.,
 Thomas W. Bowers, James Elliott, G. H. Huddell
 and Jacob S. Shryack, aforesaid.

Also at the cities of Richmond and Fredericks-
 burg aforesaid, and on and along the line of the Rich-
 mond, Fredericksburg and Potomac Railroad, inter-
 mediate between those cities; also at the towns of
 Gordonsville, Orange County and Hanover Junc-
 tion, Hanover County, State of Virginia, and on and 179
 along the line of the Louisa Railroad, intermediate
 between those towns, by the company operating
 said railroads.

That the same was known to Stephen W. Worden,
 Robert P. Davis, W. N. Bragg, Stephen Hunter,
 Warner Lindsay, Charles Hartwell, Ivory P. Hodg-
 don, H. D. Bird and A. B. Adams, aforesaid.

Also at the cities of Petersburg and Weldon,
 aforesaid, and on and along the line of the Peters-
 burg Railroad (sometimes called the Petersburg 179a
 and Roanoke Railroad), intermediate between those
 cities, by the company operating said railroad.

Also at the car works of Betts, Pusey & Harlan,
 aforesaid.

That the same was known to Alexander Wright,
 William C. Lumsden, H. D. Bird, William C. Butler,
 Thomas W. Sykes, John H. Harrison, Richard
 Graves, Mrs. Ann E. Stiles, William H. McGee,
 William Ettinger, Samuel Harlan, Jr., E. I.
 Thomas and Thomas W. Bowers, aforesaid.

180 Also at the cities of Baltimore and Frederick, aforesaid, and on and along the line of the Baltimore and Ohio Railroad, intermediate between those cities, by the company operating said railroad.

That the same was known to Jacob S. Shryack, Orlando G. White, James Reeves, Hiram Ensor, James Murray and Samuel J. Hayes, aforesaid.

Also at the City of Toledo, aforesaid, and on and along the line of the Toledo, Wabash and Western Railroad, by John M. Gillette and George S. Allen.

181 Also at the car works of Morrill & Bowers, aforesaid.

That the same was known to D. K. Wilson, Patrick Watson, G. B. Bowers, Louis Zimmermann, Joseph Miller, Frank Bluem, John M. Gillette, George S. Allen and George W. Morrill, aforesaid.

Also at the cities of Albany and New York, aforesaid, and on and along the line of the New York Central Railroad, intermediate between those cities, by Webster Wagner, George B. Gates. Morgan

182 Gardner and Theodore N. Parmalee, now deceased.

Also at the car works of Eaton, Gilbert & Co., aforesaid.

That the same was known to Webster Wagner, George B. Gates, Uri Gilbert, Walter R. Bush, B. F. Manier and Stephen W. Worden, aforesaid.

Also at the cities of Milwaukee, Milwaukee county and La Crosse, La Crosse county, State of Wisconsin, and on and along the line of the La Crosse and Milwaukee Railroad, now the Chicago, Milwaukee
182a & St. Paul Railroad, intermediate between those cities, by Charles F. Rice, R. D. Jennings, John M. Kimball and Samuel Greeley.

That the same was known to Charles F. Rice, residing in Evanston, near Chicago, Cook county, aforesaid; John Bailie and William E. Kittredge, both residing in Milwaukee, aforesaid; and John C. Fisk and William M. Page, residing in Springfield, aforesaid.

Also at the cities of Chicago, aforesaid, and Davenport, Scott county, Iowa, and on and along the

line of the Chicago and Rock Island Railroad, intermediate between those cities, by the company operating said railroad. 183

That the same was known to N. M. Wheeler and J. I. Fogg, both residing in Chicago aforesaid ; A. J. Bird, residing in Englewood, near Chicago, in Cook county aforesaid ; and Elihu Benedict, residing in Jackson, Jackson county, Michigan.

And was shown and described in the application of the aforesaid D. K. Wilson for Letters Patent of the United States therefor, filed in the Patent Office 184 September 20, 1858.

14. That the alleged invention or discovery described and claimed in reissued Letters Patent, reissue No. 6,648, had been in public use and on sale in this country for more than two years before the application of the said Ben Field and George M. Pullman for the original Letters Patent therefor, with their consent and allowance, that is to say :

At the towns of Piermont and Port Jervis aforesaid, and on and along the line of the New York and Erie Railroad, now the New York, Lake Erie and Western Railroad, intermediate between those towns, by the company operating said railroad. 185

That the same was known to John D. Brower, Henry Ayers, Joseph F. Tolson, Calvin A. Smith, Levi H. Coover, W. E. Rutter, and Henry L. Brown aforesaid.

Also at the City of Chambersburg aforesaid, and on and along the line of the Cumberland Valley Railroad, by the company operating said railroad. 185a

That the same was known to Jacob Shaffer, T. B. Wood, Daniel O. Gehr, Daniel Hull, A. S. Hull, Alex. H. McCulloh, G. W. Nitterhouse, O. N. Lull, James Adams, John Shaffer, John D. Grier, Jacob Hyser, James C. Austin, Imanuel Hale, P. W. Seibert, John Saunders, George W. Snider, W. D. E. Hayes, Daniel McPherson, John McCurdy, John Altic, Anthony Byers, Lorenzo D. Gorton, Frederick Watts, Edward M. Biddle, James M. Allen,

- 186 William B. Murray, Jacob Rhum, John Rhodes, John Wallower, J. H. Bell, J. B. Boyd, E. B. Byers, Richard Imlay, William Murray, William Milner Roberts, William Clautice, Joseph F. Tolson, Jesse W. Deal and Joseph M. Miller, aforesaid.

Also at the cities of Philadelphia and Baltimore aforesaid, and on and along the line of the Philadelphia, Wilmington & Baltimore Railroad, intermediate between those cities, by the company operating said railroad.

- 187 That the same was known to Joseph F. Tolson, John B. Hill, Jacob Frist, Samuel Harlan, Jr., Thomas W. Bowers, James Elliott, G. H. Huddell, and Jacob S. Shryack, aforesaid.

Also at the cities of Richmond and Fredericksburg aforesaid, and on and along the line of the Richmond, Fredericksburg & Potomac Railroad, intermediate between those cities ; also at the towns of Gordonsville, Orange County, and Hanover Junction, Hanover County, State of Virginia, and on

- 188 and along the line of the Louisa Railroad, intermediate between those towns, by the company operating said railroads.

That the same was known to Stephen W. Worden, Robert P. Davs, W. N. Bragg, Stephen Hunter, Warner Lindsay, Charles Hartwell, Ivory P. Hodgdon, H. D. Bird, and A. B. Adams, aforesaid.

- Also at the cities of Petersburg and Weldon aforesaid, and on and along the line of the Petersburg Railroad (sometimes called the Petersburg & Roanoke Railroad), intermediate between those cities, by the company operating said railroad.
- 188a

Also of the car works of Betts, Pusey & Harlan, aforesaid.

That the same was known to Alexander Wright, William C. Lumsden, H. D. Bird, William C. Butler, Thomas W. Sykes, John H. Harrison, Richard Graves, Mrs. Ann E. Stiles, William H. McGee, William Ettenger, Samuel Harlan, Jr., E. I. Thomas, and Thomas W. Bowers, aforesaid.

Also at the cities of Baltimore and Frederick 189
aforesaid, and on and along the line of the Baltimore and Ohio Railroad, intermediate between those cities, by the company operating said railroad.

That the same was known to Jacob S. Shryack, Orlando G. White, James Reeves, Hiram Ensor, James Murray and Samuel J. Hayes aforesaid.

Also at the city of Toledo aforesaid, and on and along the line of the Toledo, Wabash and Western Railroad, by John M. Gillette and George S. Allen.

Also at the car works of Morrill & Bowers, afore- 190
said.

That the same was known to D. K. Wilson, Patrick Watson, G. B. Bowers, Louis Zimmermann, Joseph Miller, Frank Bluem, John M. Gillette, George S. Allen and George W. Morrill, aforesaid.

Also at the cities of Albany and New York afore-
said, and on and along the line of the New York Central Railroad, intermediate between those cities, by Webster Wagner, George B. Gates, Morgan Gardner and Theodore N. Parmalee, now deceased. 191

Also at the car works of Eaton, Gilbert & Co.,
aforesaid.

That the same was known to Webster Wagner, George B. Gates, Uri Gilbert, Walter R. Bush, B. F. Manier and Stephen W. Worden, aforesaid.

Also at the cities of Milwaukee and La Crosse
aforesaid, and on and along the line of the La Crosse and Milwaukee Railroad, now the Chicago, Milwaukee and St. Paul Railroad, intermediate between those cities, by Charles F. Rice, R. D. Jennings, 191a
John M. Kimball and Samuel Greeley.

That the same was known to Charles F. Rice, John Bailie, William E. Kittredge, John C. Fisk and William Page, aforesaid.

15. That the said Ben Field and George M. Pullman were not the original, first and joint inventors of the alleged invention or discovery described and claimed in reissued Letters Patent, reissue No. 6,648.

- 192 That the said George M. Pullman had no part or share in the said alleged invention or discovery whatever; but whatsoever there was of invention or discovery, contrivance or adaptation, if any at all, was made by the said Ben Field.

VII.

- These respondents further answering say: That
- 193 they are not informed save by the bill of complaint whether or not by various instruments in writing, given for good and valuable considerations, one of the complainants, George M. Pullman, has become possessed of and now owns, and for several years last past has been possessed of the entire right, title and interest to the several Letters Patent set up in the bill of complaint upon which this suit is brought, and that he holds the said Letters Patent in trust for the complainant corporation, and has always so
- 194 held them since the organization of the said company, as alleged in the bill of complaint, and they leave the complainants to make such proof thereof as they may be advised.

VIII.

- These respondents further answering say: That of the patents on which this suit is brought, No. 4,241
- 194a expired Dec. 1, 1877; No. 24,257 expired May 30, 1880; No. 20,777 expired July 5, 1879, and No. 6,651 will expire on the 19th of September, 1880, and that No. 6,648 will expire September 18, 1882.

IX.

1. These respondents further answering say: That the alleged inventions or discoveries described and claimed in the several Letters Patent Nos. 4,241, 6,648, 6,651, 20,777, and 24,257, were

patented and known and used, and in public use and on sale by others and at other places than those above stated, prior to the alleged inventions or discoveries of the patentees thereof, and prior to their original applications for Letters Patent therefor. That they have been diligent in their efforts to ascertain their names and residences, and where used and patented, and they therefore pray leave of this Honorable Court, on obtaining such information, to file their amended answer setting forth the same. 195 196

2. These respondents further answering, on information and belief, answer and say:

That the complainants have manufactured and used sleeping cars which they aver and pretend embodied and contained the alleged inventions described and claimed in the several Letters Patent referred to in the bill of complaint, and upon which this suit is brought, but that none of the said sleeping cars so made and used were marked, labelled or stamped, or had in any other way affixed thereto the word "patented," together with the day and year the Letters Patent referred to in the bill of complaint, or either of them, were granted, nor were the same in any way marked as by the law required, so as to give notice to the public that said sleeping cars so made and used, contained or were claimed to contain any alleged invention or inventions described or claimed in any of the said Letters Patent mentioned in the bill of complaint. 197 197a

3. These respondents further answering deny that they, or either of them have been duly notified by the complainants or either of them, of any alleged infringement committed by these respondents or either of them, or any or all of the Letters Patent on which this suit is brought, mentioned in the bill of complaint, as by the statute required.

198 **1.** And these respondents further answering say: That prior to the year 1859, Webster Wagner, in connection with George B. Gates, Morgan Gardner, and Theodore N. Parmalee, now deceased, had constructed and put in operation, for profit, upon the New York Central Railroad, sleeping cars which were complete and satisfactory in their arrangements and appointments, and were suited to the necessities of travel on long lines and adapted to be
 199 used for both night and day travel.

That from the time those cars were constructed, down to the year 1866, the respondent, Webster Wagner, continued to run sleeping cars so constructed, at which time they became the property of the co-respondent, the New York Central Sleeping Car Company, some of which are still in existence and now running upon railways having large passenger traffic.

200 That the enterprise inaugurated by this respondent, Webster Wagner, in connection with George B. Gates, Morgan Gardner and Theodore N. Parmalee, met with such favor and success that the organization of the respondent, the said New York Central Sleeping Car Company, became necessary.

That, prior to the year 1859, sleeping cars, satisfactory in their arrangements and appointments, suited to the necessities of travel on long lines, and adequate for both night and day travel, were in use
 200a upon many other railroads.

2. These respondents, further answering, deny; that they, or either of them, have acquiesced in or acknowledged the validity of the Letters Patent, as alleged in the bill of complaint; and, upon information and belief, they further deny that the public have acquiesced in or acknowledged the validity of said Letters Patent; and aver that numerous suits were brought under the Letters Patent referred to in the second and fourth divisions of this answer, but were never allowed to come to trial, among

which are the following, at the times and by and 201
against certain parties, that is to say:

On or about February 6, 1860, an action of trespass on the case was brought by the owners of the aforesaid original Letters Patent granted to Theodore T. Woodruff, December 2, 1856, No. 16,159, and May 31, 1859, No. 20,777, for an alleged infringement thereof, against Barney, Parker, Woodsum and Tenney, in the Circuit Court of the United States for the Southern District of Ohio.

That although the defendants appeared in Court 202
and were ready, from time to time, to try the said cause, and were willing and anxious to do it, the same was continued until the June Term, 1861, and then discontinued, at the cost of the plaintiffs.

That on or about June 27, 1861, a bill in equity was filed by the same parties as complainants against the same parties as respondents in the same Circuit Court for alleged infringement of the same patents. This cause was continued until March 6, 203
1869, when the bill was dismissed under the rules of said Court at the cost of the complainants.

That between the years 1866 and 1869 a number of bills in equity were filed by the owners of the said Letters Patent against George M. Pullman, one of the complainants herein, and other parties, in the United States Circuit Court for the Northern District of Illinois, for the infringement of reissued Letters Patent, reissue No. 1,439, of the first of said Letters Patent, and upon the second Letters Patent 203a
referred to.

That the Court records in said causes were destroyed by fire, but after diligent inquiry, these respondents learn that these causes never came to trial, but were dismissed at the cost of the complainants.

That in the year 1871, a bill in equity was filed by these complainants, George M. Pullman and Pullman's Palace Car Company, against Jonah Wood-

204 ruff and J. Hervey Jones, in the Circuit Court for the Western District of Pennsylvania, which cause is numbered twenty-eight of the November Term of that year, for infringement of reissued Letters Patent, reissue No. 4,241, of the first of said Letters Patent.

That motion papers were made and served upon the respondents in said cause, and filed in Court for a preliminary injunction in said cause, but that upon the filing of the answer and affidavits in opposition to the motion, the bill was withdrawn at the cost of these complainants.

205 That on or about April 1, 1876, a bill in equity was filed by these complainants, George M. Pullman and Pullman's Palace Car Company, against the respondent herein, Webster Wagner, in the Circuit Court of the United States for the Southern District of New York, upon the same patents, and for the same alleged infringements thereof, which are involved in this suit; that on or about the 7th day of August, 206 1876, the respondent, Webster Wagner, filed his answer in said suit; that the replication was filed thereto August 31st, 1876; and that nothing was further done in said suit.

3. These respondents, further answering, admit; that some time in the year 1869, after the complainants had commenced running sleeping cars, an agreement was entered into by the said complainants and the respondent, Webster Wagner, and his associates, whereby they, who had the exclusive right to run sleeping cars upon the New York Central Railroad and its branches, gave the said complainants the right to run four cars over the said New York Central Railroad, in consideration of the said complainants permitting the respondent Webster Wagner, and his associates to run the same number of cars containing the alleged inventions owned and controlled by the complainants, over the Michigan Central and Great Western Railroads, upon which the said complainants held the exclusive right to furnish sleeping cars, in order that the said complainants and

this respondent and his associates might each constitute a line from Chicago to New York, as a matter of accommodation to the respective parties; but they deny that the said agreement was terminable at the pleasure of either party, and they further deny that it was in fact terminated by the complainants. 207

These respondents, further answering, admit; that agreements in writing between Pullman's Palace Car Company and the New York Central Sleeping Car Company and Webster Wagner were made on the first day of November, 1870, as alleged in the bill of complaint, and that license fees have been paid thereunder as stated in said bill; but these respondents deny that they have, or that either of them has continuously used the patented alleged inventions, referred to in said agreements, within the territory covered by the same; and they deny that they have not disputed or questioned the validity of the Letters Patent referred to in them, and the alleged exclusive rights of said complainant corporation thereunder; and they deny that by the payment of the said license fees they have thereby acknowledged the validity of said Letters Patent; and they deny that they have acknowledged the validity of said Letters Patent by written or spoken words; and they deny that they ever have had or claimed to have had any right to use said alleged inventions or any or either of them, except by virtue of said agreements; and they deny that the said Letters Patent have been generally recognized as valid, and that with very few exceptions all the railroads of the United States which use sleeping cars, do so under the license or contract of the complainants, all as alleged in the bill of complaint. 208 209a

These respondents, further answering, say; that at the time of entering into the aforesaid agreements they were not fully advised of the facts affecting the validity of the Letters Patent referred to in them, and that since that time they have been informed of facts and matters, by which they are

210 advised and believe said Letters Patent are rendered null and void; and, upon information and belief, they aver, that at the time the aforesaid agreements were entered into the complainants well knew that reissued Letters Patent, reissue No. 1,439, were void and of no effect in law, for the reasons stated in division II of this answer; that Letters Patent No. 20,777 were void and of no effect in law, for the reasons stated in division III of this answer; that Letters Patent No. 24,257 were void and of no effect
 211 in law, for the reasons stated in division IV of this answer; that Letters Patent No. 25,499 were void and of no effect in law, for the reasons stated in division V of this answer; that the reissued Letters Patent, reissue No. 3,254 were void and of no effect in law, for the reasons stated in division VI of this answer.

That since that time reissued Letters Patent, reissue No. 4,241, have been obtained, which are void and of no effect in law, for the reasons stated in
 212 division II of this answer; that reissued Letters Patent, reissue No. 6,651, have been obtained, which are void and of no effect in law, for the reasons stated in division V of this answer; that reissued Letters Patent, reissue No. 6,648, have been obtained which are void and of no effect in law for the reasons stated in division VI of this answer.

4. These respondents, further answering, deny; that they have, or that either of them has, at anytime in
 212a any way made, used or sold any sleeping cars substantially the same as those described and claimed in any of the Letters Patent named in the bill of complaint, and upon which this suit is brought, or containing any alleged invention patented by any of said Letters Patent; and they deny that they have, or that either of them has, infringed any of the Letters Patent named in the bill of complaint on which this suit is brought; and they further deny that they are, or that either of them is, preparing to build or are engaged in building any sleeping cars substantially like those heretofore built for Pullman's

Palace Car Company, using therefor substantially the same models and designs that are alleged to have been created by the complainants; and they further deny that the sleeping cars they have made, used or sold, were made, used or sold in order to cause it to be believed that they were in fact Pullman cars, all as alleged in the bill of complaint. 213

5. These respondents further answering say, that they have no information sufficient to form a belief as to whether or not George M. Pullman, one of the complainants, entered into the agreements with the railroads and assigned the same to the complainant corporation, or whether the said contracts were not renewed upon the expiration thereof, all as alleged in the said bill of complaint, and they leave the complainants to make such proof thereof as they may be advised. 214

These respondents further answering say, that the respondent, Webster Wagner, entered into a contract with the Michigan Central Railroad Company and the Great Western Railway Company of Canada, which contracts the respondent, Webster Wagner, sold, assigned and transferred to the New York Central Sleeping Car Company; but these respondents deny that the said railroad companies made it an essential condition of the said contracts with the said Webster Wagner that the cars to be put by him upon their roads should be of the same mechanical construction as regards the construction and operation of the upper and lower berths and general interior arrangements, as the well-known Pullman palace cars, alleged to have been theretofore operated upon the said roads by the complainant corporation; and they deny that the said cars were so constructed by them, and that they contained the alleged inventions set forth in the respective patents mentioned and referred to in the bill of complaint in this cause, and were so used and run upon said roads at any time, all as alleged in the bill of complaint. 215 215a

- 216 These respondents, further answering, deny; that they displaced any of the complainants' sleeping cars and patented alleged inventions, from the said Michigan Central Railroad and substituted for the complainants' said patented alleged inventions, sleeping cars and devices that infringed said Letters Patent, or either of them; and they further deny that they have caused any injury to the complainants, or deprived them of any profits and advantages whatsoever, by any wrongful or other acts;
- 217 and they deny that since the year 1875 they have kept and deprived complainants yearly from large sums of money, gains and advantages, which they would otherwise have had and received; and they deny that they have committed any unwarranted or unlawful acts of any kind; and they further deny that the complainants are entitled to any gains or profits, or to any damages whatsoever, by reason of any unjust acts or infringements by them, as alleged in the bill of complaint; and they deny that
- 218 they would not have been enabled to have made contracts with and placed sleeping cars upon the Michigan Central Railroad unless they had represented, covenanted and agreed with said road that they would build and operate said sleeping cars, constructed and operated in exact or substantial accordance with the sleeping cars constructed and operated by the complainants in alleged accordance and under the Letters Patent referred to in the bill of complaint; and they further deny that it was
- 218a by such representations and protestations that they placed their sleeping cars upon said railroads, all as alleged in the bill of complaint.

6. These respondents, further answering, deny that they have made or used any sleeping cars containing any of the alleged improvements and inventions embraced in any of said Letters Patent, numbers 20,777; 6,648; 4,241; 6,651, as alleged in the bill of complaint.

7. These respondents, further answering, deny

that they are estopped from denying the alleged 219
rights of the complainants by reason of the afore-
said licenses or agreements in other territory of the
United States, as alleged in the bill of complaint.

8. These respondents, further answering, deny
that the complainants have any right to any dam-
ages or profits, or an account for any damages or
profits, as alleged in their bill of complaint.

9. These respondents, further answering, deny 220
that the complainants have any right to any injunc-
tion against these respondents or either of them.

XI.

And these respondents pray the same advantage
of their aforesaid answer as if they had pleaded the
several matters and things aforesaid to the bill of
complaint herein, *without this*: that there is any 221
other matter, cause or thing in the said bill of com-
plaint material or necessary to make answer unto
and not herein and hereby well and sufficiently
answered, confessed, traversed, avoided or denied,
is true to the knowledge or belief of these respond-
ents; all of which matters or things these respond-
ents are ready and willing to aver, maintain and
prove as this Honorable Court shall direct, and
humbly pray to be hence dismissed with their rea-
sonable costs and charges, in this behalf most 221a
wrongfully sustained.

NEW YORK CENTRAL SLEEPING CAR COMPANY,

By W. WAGNER,
Its President.

WEBSTER WAGNER.

MUNSON & PHILIPP,

Solicitors for Respondents.

GEORGE GIFFORD,

Of Counsel.

222 UNITED STATES OF AMERICA, }
 State of New York, City } ss.:
 and County of New York. }

On this first day of September, 1880, before me personally came Webster Wagner, who being by me duly sworn, did depose and say; that he is one of the above named respondents, and is President of the New York Central Sleeping Car Company, the other respondent; that he has read the foregoing answer, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

W. WAGNER.

Subscribed and sworn to }
 before me, this 1st day }
 of September, 1880. }

J. M. DEUEL,

[SEAL.]

U. S. Comsr.,

So. Dist. of N. Y.

224

224a

In the United States Circuit Court,

FOR THE NORTHERN DISTRICT OF ILLINOIS.

GEORGE M. PULLMAN
and
PULLMAN'S PALACE CAR COMPANY,
versus
THE NEW YORK CENTRAL SLEEPING
CAR COMPANY,
and
WEBSTER WAGNER.

226

IN EQUITY.

TESTIMONY FOR DEFENDANTS,

Taken under the 67th Rule in Equity, as amended, before Jo. Lane Stern, a notary public in and for the city of Richmond, in the State of Virginia, at said city of Richmond, in accordance with stipulation of counsel.

227

RICHMOND, VA., May 10, 1881.
10 o'clock A. M.

Present—Charles K. Offield, Esq., of counsel for complainants; H. T. Munson, Esq., of counsel for defendants.

WILLIAM N. BRAGG, a witness produced on behalf of the defendants, after being duly sworn, deposes and says as follows:

228

Q. 1. Please state your name, age, residence and profession?

229 A. My name is William N. Bragg ; age, 55 ; I reside in Richmond ; I am a railroad manager.

Q. 2. What railroad have you been connected with ?

A. I was connected with the Richmond, Fredericksburg, and Potomac, the Richmond & Petersburg, the Richmond & York River.

Q. 3. How long and during what period with the Richmond, Fredericksburg and Potomac Railroad ; and in what capacity ?

230 A. I was with the Richmond, Fredericksburg & Potomac Railroad twenty-three years, about. I was four years a journeyman car builder, one year as baggage master, and extra conductor. I was two years or eighteen months, about, foreman of car shop. Six months I was assistant superintendent and foreman of car shop. Fifteen years, about, I was superintendent of the road.

Q. 4. When did you enter the service of the Richmond, Fredericksburg & Potomac Railroad ?

A. On the 6th day of May, 1846.

Q. 5. What was the nature of your employment with the Richmond and Petersburg Road ?

231 A. I superintended the repairs of the cars, road, bridges, &c.

Q. 6. What was the nature of your employment with the Richmond & York River Road ?

A. Superintendent of the road.

Q. 7. While in the employment of the Richmond, Fredericksburg & Potomac Rail Road, was there such a thing as a sleeping car in use upon that road ?

A. There was.

Q. 8. When did you first see it there ?

A. I couldn't say the day, but I saw it when I first went there, the first week, in 1846.

232 Q. 9. What became of that sleeping car ?

A. It was pulled to pieces.

Q. 10. Who pulled it to pieces and when ?

A. I had charge of the work of pulling it to pieces in 1849.

Q. 11. Did you then so examine that car as to under-

stand its construction and mode of use, I mean while it was in use upon the road, and up to the time when it was torn apart? 233

A. I frequently repaired the car, and think I understood the working operations pretty well of it.

Q. 12. Please now describe, in your own way, as fully as possible, the construction of that car?

A. The car was constructed with three tiers of berths running horizontally, with partitions dividing the berths. The lower berth unfolding out towards the aisle of the car, forming a double berth. The middle berth hinged to the side of the car, forming a back to the lower berth or seat, when in day use. The upper berth, as well as my recollection serves me, was about four inches wider than the middle berth. This berth was hinged also to the side of the car, so as to be swung up when the car was in day use, and I suppose fastened by hooks. 234

Q. 13. Was there an aisle in this car?

A. There was.

Q. 14. Berths on one or both sides of that aisle?

A. Both sides.

Q. 15. How were the berths fitted up; I mean as to bed clothing? 235

A. They had cushion or mattress, cushion you would call it, I suppose; pillow or bolster, bolster I think they called them; they had sheets, and I think comfort; I don't think they had a blanket.

Q. 16. Were the cushions or mattresses fast or loose?

A. Loose.

Q. 17. How was the cushion held to the middle berth, which you say was hinged and formed the back of the lower berth?

A. I can't recollect how it was fastened; I don't think there was any fastening to it; at night it was laid on. 236

Q. 18. How wide were the partitions dividing the berths?

A. I think the stationary partitions dividing the berths were about two feet; I could not say exactly, about twenty inches.

- Q. 19. How high were these stationary partitions ?
 A. They went to the ceiling of the car.
- 237 Q. 20. From where ?
 A. From the floor, of course.
- Q. 21. Were they open work or continuous ?
 A. They were tongue-and-groove boards.
- Q. 22. Were there any partitions other than these stationary ones connected with the berths ?
 A. There were other boards ; I think they were put together, as well as I recollect, the same as the partitions, except that they had a battren across them.
- Q. 23. What were they for ?
 238 A. They were to divide the berths at night, I suppose, I mean the lower berth, the one that turned over in the aisle to form a berth.
- Q. 24. How far upwards did the upper berth which you say was hinged to the side of the car, swing up, when the car was in day use ?
 A. Well, I couldn't say exactly, I should say about two feet or two feet six ; I mean the front.
- Q. 25. Where did the front edge go to ?
 A. It went within about four inches of the roof, to a board or strip running horizontally with the car.
- 239 Q. 26. How was it supported for night use ?
 A. It was supported by a lug or bolt, a lug, I think, on the partition.
- Q. 27. What was done with the boards that were used to divide the lower berths at night, when the berths were not used for sleeping purposes ?
 A. I don't know ; I think they were put in the bottom box under the seats ; I wouldn't say positively.
- Q. 28. Then there was a storage box underneath the seat or lower berth, was there ?
 A. There was.
- 240 Q. 29. Whereabouts on the lower berth were these boards that divided such berths placed ?
 A. They were placed at each end, of course.
- Q. 30. How were they placed with respect to the stationary partitions ?

A. They were fastened to the partition to form a wider partition.

Q. 31. How wide did that then make the partition 241
between the berths?

A. I couldn't say exactly, I suppose about three to three and a half feet.

Q. 32. Did the stationary partition, thus supplemented by the movable board, extend from the side of the car to the aisle of the same, as your description leads me to suppose, if not, how far did it extend towards the aisle of the car?

A. I think it extended to the aisle.

Q. 33. Did you ever sleep in this car? 242

A. I never did; I have laid on the berth in the day time, but never went to sleep.

Q. 34.

Q. 35. Was the car running on the road when you lay in it?

A. It was; I have laid in it both on the road and in the station.

Model introduced in evidence for identification, and marked "Defendants' Exhibit 'Richmond Car.'"

243

JO. LANE STERN, Notary Public,
in and for the City of Richmond.

Complainants' counsel objects to the introduction of this model as incompetent and irrelevant under the above deposition.

Q. 36. Please examine the model Defendants' Exhibit "Richmond Car," and say whether or not you 244
ever saw a sleeping car in use constructed like said model, so far as one berth section, which it represents, is concerned?

A. This model represents the car that was on the

Richmond, Fredericksburg & Potomac Rail Road, so far as I recollect, in 1846, I first saw it.

245 Q. 37. Point out in this model the things you have called "boards" in your deposition?

A. The notary is requested to mark these boards "A," and accordingly does so.

Q. 38. Please adjust these boards in the model in the proper place, if you can do so, as like boards were used in the car you have testified about?

The witness has placed the boards as requested.

246

Q. 39. In placing these boards in position, you swung the upper member of the lower berth upwards, outwards and downwards, until its said upper member extended in a horizontal plane outwards into the aisle of the car, where it was supported by its legs, and then fastened the boards "A" at the ends of said extended upper member of the lower berth, so that said boards formed a partition at each end of the part of the lower berth projecting into the aisle, and with the stationary partitions formed a division or partition extending the whole width of the lower berth, and forming head and foot boards of the berth, did you not?

247

A. I did.

Q. 40. Was that the day or night position of the lower berth?

A. Night.

Q. 41. Now please put such berth in the day position as such car was used on the Richmond, Fredericksburg & Potomac Rail Road?

A. I have done so.

248 Q. 42. In doing this you have detached or removed the boards "A" from the lower berth and stationary partition, and turned the projecting member of the lower berth back upon the lower member so as to form a longitudinal seat, did you not?

A. I did.

Q. 43. What was done with these removable parti-

tions or boards when detached in the practical car as used on the Richmond, Fredericksburg & Potomac Rail Road ? 249

A. I couldn't say what was done with them. I think they were put on the upper berth. That's my impression.

Q. 44. Please put the middle berth in its day position, and then in its night position, as it was operated in the car used upon the last named rail road ?

A. I have done so.

Q. 45. In doing this you lowered said berth downwards, so as to rest against the side of the car, and form a back for the longitudinal seat for the day use; and for the night position you raised the lower edge of said berth upwards, until the said edge reached a horizontal plane, the said berth swinging on its hinges, by which it is attached to the wall of the car, did you not ? 250

A. I did.

Q. 46. Please put the upper berth into its day position, and then into its night position ?

A. I have done so.

Q. 47. In doing this you have swung said berth upon the hinges by which its back edge is connected with the side of the car, so that its front edge is carried upwards until it passed behind a strip projecting downwards from the roof of the car, and stood at about an angle of forty-five degrees. Was this so done in the car used, as you have stated, upon the Richmond, Fredericksburg & Potomac Rail Road ? 251

A. According to the best of my knowledge it was.

Q. 48. In putting said berth in its night position you swung its front edge downwards, until the berth reached a horizontal plane, and rested upon lugs upon the stationary partition, was that the way that the upper berth operated in the car used on the Richmond, Fredericksburg & Potomac Rail Road, as you have stated ? 252

A. It was.

Q. 49. In this model said upper berth is fastened when swung up in its inclined or day position by a cen-

253 tral bolt and end hooks ; what is your recollection about the fastenings of the upper berth in the sleeping-car used as you have stated on the car on the Richmond, Fredericksburg & Potomac Rail Road ?

A. I recollect the hooks, but don't recollect the bolt ; I recollect on one occasion putting some leather straps on the edge of the berth fastening to the horizontal board the brass screw, as the hooks would frequently shake out and the berth would fall.

Q. 50. Were these straps fastened to the berth ?

A. They were tacked or nailed to the berth ; the leather had a button-hole in the end of it, and went
254 over the screw.

Q. 51. Did this arrangement admit of the berth being detached from the horizontal strip projecting downward from the roof, and which contained the screws, so that said berth could be swung down for sleeping purposes ?

A. Certainly it could be detached.

Q. 52. How came you to put these straps on ?

A. I had orders from the foreman of the shop, James Warnecott, to do so.

Q. 53. What kept the loose cushion or mattress on
255 the upper berth from shaking out if the berth sometimes shook loose ?

A. That I couldn't say. They may have shaken out.

Q. 54. Was the upper berth in the car used as you have stated on the Richmond, Fredericksburg & Potomac Railroad, flat like a board, or tray-like, as in the model, " Richmond Car " ?

A. It was made as a frame, and formed a tray position.

Q. 55. Explain what you mean by tray position ?

A. I mean that the centre of the berth is lower than
256 the outer edge.

Q. 56. Do you recollect whether or not the sleeping car used as you have stated on the Richmond, Fredericksburg & Potomac Rail Road, had the upper berths hinged to the side of the car at their extreme back edges ?

A. They did.

Q. 57. Have you not recently, at the request of counsel for defendants, searched the old records in possession of the Richmond, Fredericksburg & Potomac Railway Company, for the purpose of finding any documents relating to the sleeping car which was used as you have stated upon said road, as early as May, 1846? 257

A. I did.

Q. 58. Did you find any such documents?

A. I did.

Q. 59. Where are they?

A. I have them, and produce the same.

Two written documents offered in evidence and marked respectively "Richard's Bill for Richmond Car," and "Booth's Bill for Richmond Car." 258

JO. LANE STERN, Notary Public,
in and for City of Richmond.

Q. 60. You found these documents "Richard's Bill, Richmond Car," and "Booth's Bill, Richmond Car," in the archives of said railroad company, did you not? 229

A. I did.

Q. 61. Have they remained in your possession from the time you found them until the present time?

A. They have.

Recess taken until 2 o'clock.

Q. 62. In this model the rear or back edge of the upper berth is cut away at an angle, so that it stands in a horizontal plane when the berth is raised up in its day position. Was the car used upon the Richmond, Fredericksburg & Potomac Railroad, as you have mentioned, constructed in that manner? 260

A. It was.

Q. 63. What makes you remember that fact?

A. I recollect the peculiar shape of the hinge.

Q. 64. What was that shape ?

261 A. The hinge was made of wrought iron, seemingly,
in a blacksmith shop. It was not a bought hinge. The
hinge was made to fit the bevel of the back of the upper
berth.

CROSS-EXAMINATION BY C. K. OFFIELD, ESQ.

X-Q. 65. When were you 55 years old ?

A. 9th of October, 1880.

262 X-Q. 66. As I understand you, the first four years
after your connection with the Richmond, Fredericks-
burg & Potomac Rail Road, immediately following May
6, 1846, you were continuously a journeyman car
builder in the employ of that road. Is that right ?

A. That's right.

X-Q. 67. Was this sleeping car you have described in
active use upon that road at the time you went there on
May 6, 1846 ?

A. Not as a sleeping car.

X-Q. 68. As what kind of a car ?

A. They used it as a day car at the time.

263 X-Q. 69. When were these partitions and berths
which you have described torn out of the car, and by
whose orders ?

A. They were torn out of the car by me ; that is, by
my assistance. I had charge of the work in 1849.

X-Q. 70. You being a journeyman employee in 1849,
who directed you to tear those partitions out of the
car ?

A. The foreman of the shop—James Warnecott.

264 X-Q. 71. For what reason were these partitions and
berths taken out of that sleeping car in 1849, and what
was substituted, if anything, in their place ?

A. The only reason that I know of was that there was
no use for sleeping cars on the road, as all trains were
day trains. Nothing was substituted except the seat,
of course ; the longitudinal seats. In other words, the
bottom seat was not taken out at all ; that continued.

X-Q. 72. And this middle berth that you have talked about remained in its place as the back of that bottom seat, did it not? 265

A. It did.

X-Q. 73. And this folding over upper half of the bottom seat remained just as it was, didn't it?

A. That was taken out—the upper part; the folding part was taken out.

X-Q. 74. What was done with it?

A. It was put up over the shop, with all the fixtures that came out of the car.

X-Q. 75. What was substituted in the place of this upper half of the lower berth, if anything? 266

A. It was a cushion substituted on the seat.

X-Q. 76. Nailed fast, or simply laid on?

A. Laid on.

X-Q. 77. Then the only use that was made of that sleeping car from the time that you became acquainted with it in 1846 until the time of its remodeling in 1849 was as a day car?

A. Yes.

X-Q. 78. How long had it been, do you know, prior to May, 1846, since this car had been used at any time for sleeping purposes? 267

A. I can't say when it was used as a sleeping car for nights—for night purposes. I don't know.

X-Q. 79. All you know then as to the practical use of that sleeping car, as a sleeping car, on that road, you know from hearsay, or conversation with others. Is that so?

A. I know it was a sleeping car, without conversation with others.

X-Q. 80. Yes; you could see for yourself that it was arranged for sleeping purposes when you went there in 1846, but what I wish to know is this, whether you have any personal knowledge as to the manner in which that sleeping car was used—I mean as to the arrangement of berths and all that—at any time when it was actually used as a sleeping car, except what you have learned 268

- from others, and except the opinion you would form from it when you saw it used as a day car in 1846 ?
- 269 A. I was never on the car at night.
- X-Q. 81. Did you ever see the car prior to May, 1846 ?
- A. I suppose I have.
- X-Q. 82. Did you know anything about its construction prior to May 6, 1846 ?
- A. Nothing as a sleeping car.
- X-Q. 83. Between May 6, 1846, and the time of the internal destruction of this car in 1849, between what points did the car run ?
- 270 A. Between Richmond and Acquia Creek.
- X-Q. 84. What was the distance between those two points as run by this car ?
- A. Seventy-five miles.
- X-Q. 85. What length of time was occupied in running this passenger car between those two points ?
- A. That depended a good deal upon circumstances at that time.
- X-Q. 86. What was the schedule time ?
- A. Never had a schedule in those days.
- X-Q. 87. How many miles an hour was it contemplated to run a passenger car between those two points at that time ?
- 271 A. I don't think they ran over fifteen at the outside.
- X-Q. 88. How many passenger cars was in use on that road besides this car, between May 1846 and the Fall of 1849 ?
- A. I think there were four large cars and two small English cars.
- X-Q. 89. How many passenger cars did they run on each train between those two points, between the dates just given ?
- 272 A. They ran one passenger car, and a baggage car, half baggage and half passenger.
- X-Q. 90. This baggage car, half baggage and half passenger, was one of the four long cars you have just mentioned, wasn't it ?

A. No, there were four cars besides the baggage cars, four coaches.

X-Q. 91. This sleeping-car ran as a day car continuously, did it not, between May, 1846, and the time of its remodelling in 1849? 273

A. It did not.

X-Q. 92. Where was it when it was not running on the road between those dates?

A. Under the shed.

X-Q. 93. It took its turn running, didn't it, right along with the rest of the passenger cars between those dates?

A. No, they didn't run that as much as they did the others. 274

X-Q. 94. What year was it you laid down in one of the berths of that car, and which berth was it?

A. It was in the year '46, but I can't say which berth.

X-Q. 95. It was in one of the upper berths, wasn't it?

A. No, sir; I didn't understand whether you meant longitudinal or not; it was one of the lower berths.

X-Q. 96. Did you unfold that lower berth when you laid down in it?

A. I did not.

X-Q. 97. Did you ever unfold that under berth and examine its construction and arrangement? 275

A. I have.

X-Q. 98. When and what was the occasion?

A. I can't tell you the day when.

X-Q. 99. Did you ever go through that movement with that under berth more than once?

A. I suppose I have several times.

X-Q. 100. Have you any distinct recollection of ever doing it at all, and for what purpose did you handle that lower berth?

A. Yes, I have handled it, at dinner hour sometimes 276 I used to go in there and rest, while the car was under the shed.

The further taking of this deposition is continued until to-morrow at 10 A.M.

JO. LANE STERN, Notary Public.

277

May 11th, 1881, 10 o'clock, A.M.

Met pursuant to adjournment.

Present : Same parties as yesterday.

Cross-examination of W. N. BRAGG continued.

278 X-Q. 101. Where did you ever see any pillows or bolsters in that car you had described?

A. I have seen in the car, and I have seen them over the shops.

X-Q. 102. Where did you see them in the car?

A. In the box under the seat.

X-Q. 103. Did you ever see any sheets, blankets or bed clothing of any description in that car at any time?

A. I never did, but I have seen them over the shops with the pillows and bolsters.

X-Q. 104. What have you seen over the shops with the pillows or bolsters?

279 A. I have seen sheets and comforts.

X-Q. 105. Then when you swore in answer to direct question 15, that the berths of that car were fitted up with sheets and pillows or bolsters, the reason why you swore so was because you had seen such articles up over the shop at sometimes; is that it?

A. Yes, I saw them over the shop, and knew they belonged to this car.

280 X-Q. 106. You swore in the answer last referred to that the berths of that car were fitted up with sheets. Do you know, of your own knowledge, whether any sheets were ever used on that car?

A. I never saw them used.

X-Q. 107. How long did those sheets remain up over the shop, and how many sheets were there?

A. They remained there some considerable time. As to the number, I don't know. I never counted them.

X-Q. 108. These were the ordinary sheets for bedding, were they? 281

A. They were sheets the same as are used for a sleeping car—narrow sheets.

X-Q. 109. Any difference in the sizes of the sheets?

A. I never examined them closely.

X-Q. 110. What was the length of these three berths, and did they occupy the full space lengthwise between the partitions?

A. They were about six feet, and occupied the full space.

X-Q. 111. Give their exact length?

A. That I can't do. 282

X-Q. 112. As near as you can?

A. I have given it; six feet.

X-Q. 113. How many berths or sections were there lengthwise of this car?

A. There were five, I think, besides the ladies' apartment.

X-Q. 114. Five tiers of berths or sections on each side of the car, you mean?

A. That's what I mean.

X-Q. 115. Did they have any turn-tables or means of turning cars at that date on that road? 283

A. They had.

X-Q. 116. Where was this ladies' apartment you have just mentioned in the car?

A. In the end of the car, of course.

X-Q. 117. Separated from the gentlemen's apartment by a permanent partition forming the two apartments?

A. It was.

X-Q. 118. Did this partition extend clear across the car and from the floor to the ceiling?

A. It did, with a door in the centre.

X-Q. 119. How far was this partition from the nearest end of the car to it? 284

A. About six feet, as well as I remember.

X-Q. 120. Did these five berths in the gentlemen's apartment of the car occupy the entire space length-

wise upon each side, to the end of the car farthest from the ladies' apartment?

285

A. I think they did.

X-Q. 121. Was there any water-closets or other means by which the necessities of nature could be attended to in that car in either apartment?

A. There was, in the ladies' apartment.

X-Q. 122. Where was it in the ladies' apartment, and state generally its construction.

A. It was in the corner against the side of the car and the partition.

286

X-Q. 123. Was it constructed as ordinarily built in cars to-day, with the exception that it was in the corner formed by the car and the partition, instead of the corner formed by the walls of the car?

Objected to as indefinite and misleading, as railroad car closets have a variety of constructions at the present day.

A. Well, at the present day they have them built in different forms.

X-Q. 124. How was that one built?

287

A. It was built of tongue-and-groove boards running from the side of the car out about three or three and a half feet, and then from that corner to the partition, about the same distance, with a door in the centre.

X-Q. 125. Was this ladies' apartment disturbed or revamped in any manner at the time you remodeled that car in 1849?

A. The ladies' apartment was continued.

X-Q. 126. No change made in it?

A. None, except taking the berths out.

X-Q. 127. Took all the berths out, didn't you?

288

A. All except the lower berth, which acted as a seat.

X-Q. 128. Took out the middle berth, didn't you?

A. Did not, as that acted as the back of the seat.

X-Q. 129. How large were the windows in that car upon each side, and were there any end windows?

A. The windows were about twenty-four inches wide, and about two feet four inches long.

X-Q. 130. How high was the window sill, or the lowest point of the window from the floor of the car? 289

A. About two feet ten to three feet.

X-Q. 131. How near to the underside of the roof of the car did this window approach?

A. I suppose it must have been about fifteen or sixteen inches, say sixteen inches.

X-Q. 132. Were there any windows in either end of the car?

A. There were none.

X-Q. 133. Were there any other windows in the car except the square ones you have described? 290

A. There were gothic sash over the main window containing three glass.

X-Q. 134. Did they assist in lighting the car?

A. I suppose they did.

X-Q. 135. How near to the inner side of the roof of the car did the highest point of this gothic window approach?

A. I suppose about eight to ten inches.

X-Q. 136. And any person being in the upper berth could look right out of that gothic window, and out of the upper part of the square window, could they not? 291

A. They could see out of the gothic window, but could not, I think, out of the lower window.

X-Q. 137. Why could they not see out of the upper part of the lower window?

A. Because the berth covered it.

X-Q. 138. Was there any board or any other kind of protection to cover up those gothic windows on the inside of the car, above those upper berths?

A. I think not.

X-Q. 139. How high was it from the floor of the car to the nearest point of the ceiling of the car on the wall side where the berths were? 292

A. It was about six feet six, as near as I remember.

X-Q. 140. How high was it from the floor of that car

at its centre in a perpendicular line to the under side of the roof?

293 A. It was about seven feet four or seven feet six.

X-Q. 141. Then the roof of the car was a regular uniform arch, and being twelve inches higher in its centre than at its point of contact with the sides of the car, is that it?

A. No, it is not a regular arch, it is a circle, not an arch.

X-Q. 142. Well, it was a uniform circle twelve inches higher in its centre than at its end, was'nt it?

A. Yes, it was a regular circle.

294 X-Q. 143. No raised roof or deck of any kind about that car, was there?

A. None.

X-Q. 144. The roof of that car was supported at its under side by ordinary carlines, was it not?

A. It was.

X-Q. 145. How thick and wide were these carlines?

A. They were an inch and a half to three-quarters thick, and two and a quarter in depth.

X-Q. 146. That is, they extended down from the roof of the car two and a quarter inches?

295 A. That's what I mean.

X-Q. 147. How wide was this car, measuring by a straight line between its two inner sides?

A. I think about nine feet, I couldn't say positively.

X-Q. 148. Seven feet would be nearer to it, wouldn't it?

A. No, sir; I never saw a railroad car seven feet wide.

X-Q. 149. Will you swear that that car was eight feet wide between its inner sides?

A. I wouldn't hesitate in the least to swear to it, sir.

296 X-Q. 150. Will you swear it was eight feet two inches wide between its two inner sides?

A. I have given you the width of the car to the best of my knowledge.

X-Q. 151. Question repeated.

A. I will not swear to it.

X-Q. 152. What was the length of that car between its two inner ends?

A. I think it was about forty to forty-one feet.

297

X-Q. 153. You have sworn that one side of this car at least was occupied by six sections, one being the ladies' apartment, each being six feet long exclusive of partitions, extending from end to end of the car, will you now explain to the Court, how six sections, each six feet long, can occupy forty-one feet, the distance you have just sworn was the inside measurement of that car from end to end?

A. I didn't swear that the car was exactly forty-one feet, and I didn't swear that the berths were exactly six feet, I said "*about*."

298

X-Q. 154. Is that the only explanation you can give of the apparent discrepancy in your two statements?

A. Well the partitions, you know, take up some of the distance.

X-Q. 155. How many partitions were there?

A. Five.

X-Q. 156 These partitions were made of boards a half an inch thick, were they not?

A. They were not. They were from three-quarters to an inch thick usually.

299

X-Q. 157. Were there any posts at the aisle ends of these partitions, extending from the floor to the ceiling of the car?

A. There were not.

X-Q. 158. How wide was this lower seat upon which the passengers sat?

A. I think some eighteen to twenty inches.

X-Q. 159. And this seat folded out into the aisle, did it?

A. The top of the berth did it. Yes, you may say the seat.

300

X-Q. 160. Did this seat extend out over the top of this longitudinal plank upon which it rested as a base, forming the box?

A. I think it did.

X-Q. 161. How far was it from the wall of the car to

the outer or aisle side of this seat, when used as a seat?

301 A. Well, I would say twenty to twenty-two inches. Of course I can't say exactly the inches.

X-Q. 162. How thick was the frame forming this middle berth at its outer or aisle side, and how thick was the berth itself?

A. I can't say exactly, but about an inch and a half, I suppose. I couldn't say as to the thickness of the berth.

X-Q. 163. You haven't any recollection then as to how thick that middle berth was?

302 A. This middle berth was trimmed with curled hair, so as to make it a soft back, and might have been an inch or an inch and a quarter thick.

X-Q. 164. It had slats fastened transversely across it so as to make it an easy flexible bed, didn't it?

A. I think it was trimmed with webbing.

X-Q. 165. How do you mean trimmed with webbing?

A. Webbing nailed across the frame, as was usual in those days.

X-Q. 166. This middle berth, when raised in position for night use, was of the same width as the partition, was it?

303 A. About the same width.

X-Q. 167. When you say *about* the same width you mean that it was the same width so far as you recollect, do you not?

A. I think it came out to the edge of the partition.

X-Q. 168. You are quite confident, are you not, that the upper berths in that car were movable—could be swung on hinges?

A. I am quite confident of it, sir.

304 X-Q. 169. And you are quite confident also that that upper berth was four or five inches wider than the dividing partitions?

A. I think they were wider.

X-Q. 170. Will you swear positively that they were wider?

A. I won't swear to it.

X-Q. 171. You have an impression, haven't you, that

there was a board fitted up past the carlines to the roof of the car, and that this board dropped down five or six inches, or four or five inches, and that the upper berth when closed swung up against this board, or in contact with it, and was there fastened in some manner. Will you swear positively that any such device as that existed in that car in connection with that upper berth? 205

A. I will swear there was a strip there running parallel with the car.

X-Q. 172. Where was that strip relative to the dividing partitions forming the sections?

A. The strip was fastened to the carlines running parallel with the car.

X-Q. 173. Then the strip didn't go to the roof of the car, it was simply fastened to the carlines? 306

A. It did go to the roof. It was notched out and went to the roof.

X-Q. 174. How far was this strip distant from the point where the roof joined the side of the car?

A. I suppose about two feet and a half, as well as I remember.

X-Q. 175. How wide were those dividing partitions?

A. I gave you the width.

X-Q. 176. Give it again? 307

A. About twenty-two inches.

X-Q. 177. Then this strip was about four inches farther from the wall of the car on the carlines than the partition extended on the carlines; is that it?

A. I think that is about it, sir.

X-Q. 178. Will you swear positively that that strip was any wider than two inches and a quarter?

A. I won't swear positively to anything. I swear to the best of my knowledge.

X-Q. 179. What was the distance between the upper inner edge of that upper berth, when in position for night use, and the point of juncture between the roof and sides of the car? 308

A. I would say some sixteen or eighteen inches.

X-Q. 180. How thick was that upper berth with the mattress upon it?

A. I would say about five inches, the frame and all;
 309 four to five inches.

X-Q. 181. How was the bed bottom of this upper berth formed?

A. I think it was formed with webbing.

X-Q. 182. Any slats used for the bottom?

A. I don't recollect any slats.

X-Q. 183. How far was it in feet and inches, in a straight line, from the inner or wall side of the car to the outer or aisle edge of this upper berth when that berth was in position for night use?

A. I think that berth was about two feet wide.

310 X-Q. 184. Whereabouts was that upper berth fastened to the wall of the car relative to the rectangular window you have described?

A. It was fastened to the pillars of the car.

X-Q. 185. What do you call the pillars of the car—describe them?

A. What you call the pillar of a car is what you call the stud for framing a house.

X-Q. 186. How far did these pillars extend into the car to which these berths were fastened?

A. The pillars were usually four inches wide.

311 X-Q. 187. And extended into the car how far from its side?

A. They extended about an inch and a half, I judge.

X-Q. 188. How much space was there between the inner edge of the upper berth and the window glass in the side of the car?

A. Well, I have just said an inch and a half.

X-Q. 189. The window glass in those cars were set flush with the inner side of the car, were they not?

A. They were not.

312 X-Q. 190. Were they movable glass that could slide up and down?

A. It was a movable sash, and went down, as all did in those days.

X-Q. 191. Did the gothic part of the window move?

A. It did not.

X-Q. 192. How high was the longitudinal seat from the floor when in position for day use? 313

A. I would say about twenty inches.

X-Q. 193. How wide was the aisle of this car between those partitions?

A. I suppose it was about four feet, or somewhere thereabouts; probably four and a half.

X-Q. 194. That car was the ordinary day car of that date, fixed up for sleeping purposes, wasn't it?

A. The car was built as a night car, but used as a day car, as I understood.

X-Q. 195. You couldn't tell from the car itself whether it had been originally built for a day car or a sleeping car, could you? 314

A. Yes, I could. It was not built as ordinary day cars were built.

X-Q. 196. Then it was built originally as a sleeping car and then altered as a day car; is that it?

A. It was built as a sleeping car, then used as a day car, finally remodeled as a day car. In other words, the berths were taken out.

X-Q. 197. What became of that car? Where is it now?

A. Of course the car is used up; worn out many 315 years ago.

X-Q. 198. Was the body of the car destroyed?

A. It was.

X-Q. 199. What was the distance between the top of the middle berth when arranged for night use, and the bottom of the upper berth when so arranged?

A. I would say about twenty inches.

X-Q. 200. Where was the middle berth hinged with relation to the windows?

A. It was hinged about three or four inches above the bottom of the window—above the top of the window 316 sill.

X-Q. 201. How many windows were there between each partition or in each section?

A. I think there were about three, as well as I can recollect.

X-Q. 202. Do you mean there were three?

317 A. I think there were three.

X-Q. 203. Were these partitions the same width from floor to ceiling?

A. I think they were.

X-Q. 204. What was the highest passenger car in use on the Richmond, Fredericksburg & Potomac Rail Road, when you went there in May, 1846? Give its height, both as to the wall sides and the centre?

A. Well, the height on the wall side was about six feet six, and the carlines generally averaged from ten to twelve inches sweep, elevation, in those days.

318 X-Q. 205. Who helped you, if any person, to remodel that car in 1849?

A. There was a colored man there named Moses, who helped me.

X-Q. 206. Is he dead?

A. He is dead, sir.

X-Q. 207. Can you mention some person who assisted you, who isn't dead?

A. Mr. John J. Pendleton may have repaired the sash, as he usually made and repaired the sash.

319 X-Q. 208. Who first called your attention to that sleeping car since its destruction in 1849?

A. I don't know who called my attention to it.

X-Q. 209. You got up a sleeping car yourself once, didn't you?

A. I did not. I got up a sleeping chair for a car.

X-Q. 210. You put one of those sleeping chair cars on the Richmond, Fredericksburgh & Potomac Railroad, didn't you?

A. Yes, I did, and on other roads too.

X-Q. 211. What year did you get up that sleeping chair car for that road?

320 A. In 1857.

X-Q. 212. Did you get a patent on it?

A. I did.

X-Q. 213. Do you remember its number and date?

A. 1857 is the date, I don't recollect the number.

X-Q. 214. It cost a good deal more to fit up a car

with your chair sleeping devices of the same size as the old sleeping car than it would have cost to have fitted up the devices as you found them in that old sleeper, 321 didn't it?

A. I should say it would. It was better finished.

X-Q. 215. Your sleeping car devices put in the Richmond, Fredericksburg & Potomac car in 1857 were a great improvement upon the devices and apparatus you discovered in that old sleeping car in 1846, were they not?

A. I cant say that they were. I never could sleep in the chairs.

X-Q. 216. How long did you run those chair cars on the Richmond, Fredericksburg & Potomac Road? 322

A. I left them running there when I resigned my position as Superintendent, January 1, 1869.

X-Q. 217. When was the first sleeping car, to your personal knowledge, ever run or used on the Richmond, Fredericksburg & Potomac Railroad for sleeping purposes?

A. I think in 1866 or 1867.

X-Q. 218. What sleeping car was that?

A. The "Woodruff."

X-Q. 218. T. T. Woodruff's, and built under his patents? 323

A. I dont know whose patents it was.

X-Q. 219. Your road paid a royalty or license fee to Woodruff for the running of those sleepers, didn't it, or granted him certain valuable privileges?

A. Didn't grant him anything.

X-Q. 220. What sleeping car superseded Woodruff's, if any, upon your road, the Richmond, Fredericksburg & Potomac?

A. I don't think any superseded it while I was on the road. I wouldn't like to say about that positively. 324

X-Q. 221. What sleeping car superseded it, if any, either before or after you left the road?

A. I can't say. Lucas was the superintendent. I don't know whose cars they were.

X-Q. 222. Do you not know that it was the car of the complainants—the Pullman Sleeping Car?

325 A. No, I don't know that it was. I only know that it is Pullman's car now in use on the road.

Recess till 2:30 P. M.

X-Q. 223. What was the size of those bolsters that you have spoken of, having seen in the box under the seat, and up over head in the shop?

A. They were the usual size of bolster or pillow, as you may call it, a bolster or pillow.

326 X-Q. 224. Stuffed with feathers?

A. Stuffed with curled hair.

X-Q. 225. What kind of cover on it?

A. I think it was a kind of maroon color—reps, I suppose you would call it.

X-Q. 226. No pillow-case I suppose?

A. Never saw any.

X-Q. 227. There was plenty of room in that box under the seat, wasn't there, to stow away all the mattresses, bolsters or ordinary bed clothes, which could have been used on the berths?

327 A. I should judge not. I should say not.

X-Q. 228. How far from the nearest point on the side of the car was it to the point where the upper berth struck the carlines, when raised up?

A. I should think from two feet to two feet six, I couldn't say positively.

X-Q. 229. Did you ever see any of those little boards which you said formed the head and foot boards between the berths in position, when the berths were made up?

A. I never saw all the berths made up.

328 X-Q. 230. Then you never saw any of those pieces in actual use?

A. Yes, I have.

X-Q. 231. Were there any curtains to hang up in the front of those berths that you ever saw?

A. I think there were.

X-Q. 232. What did they hang on ?

A. They hung on a rod.

339

X-Q. 233. Where was the rod ?

A. The rod ran parallel with the strip above the berth.

X-Q. 234. How far from the strip was this rod, and what kind of a rod was it ?

A. I suppose it was three-quarters of an inch from the strip, and was an iron rod.

X-Q. 235. How large an iron rod ?

A. I suppose about three-eighths of an inch.

X-Q. 236. Did it extend the whole length of the car on each side, and was it close up to the carlines of the car, or did it depend down ?

330

A. It extended as far as the berths extended. It was fastened to the strip, that's my impression.

X-Q. 237. And hung down from the strip ?

A. It projected off from the strip.

X-Q. 238. Were the curtains long enough to reach to the floor, and how were they attached to the iron rod ?

A. I think they came very near the floor, and were attached to the rod by brass rings.

X-Q. 239. That is, a brass ring encircled the rod, passing through the curtains ?

331

A. The rings were sewed on the curtains, tacked on.

X-Q. 240. These curtains were on these rods, and the rods were on the car when used as a day car in 1846. Were they not ?

A. I found them there.

X-Q. 241. And the curtains remained on the rod and in the car until you dismantled it in 1849 ?

A. I think they did.

X-Q. 242. Give the names of parties who worked in that shop or upon or in connection with the road during or between the years 1846 and 1849 ?

332

A. Pendleton, Powell, Moses, Warnecott, Bragg, and a man named Abraham Dean was the trimmer and painter. I think that's all.

X-Q. 243. How many of them are dead ?

A. Powell, Warnecott, Moses and Abraham.

333 X-Q. 244. Who made this model you have been testifying about?

A. I don't know.

X-Q. 245. Will you describe exactly the construction of the hinge which you say connected the upper berth with the side of the car?

A. I described it to you yesterday.

X-Q. 246. Perhaps you did, but just describe it again with all its attachments, and make a drawing, if you can, showing its exact construction, and hand it to the notary to be identified with your deposition?

334 A. It was a wrought iron hinge ; seems to have been made in a blacksmith shop, and bent to a bevel to fit the berth. The hook was in the shape of a letter T, which I will show you in the drawing.

X-Q. 247. Was this hook driven into the side of the car, or how fastened?

A. Screwed on the pillar of the car.

Adjourned until to-morrow at 10 A. M.

JO. LANE STERN,
Notary Public.

335

MAY 12, 1881, 10 A. M.

Met pursuant to adjournment.

Present—Same parties as yesterday.

Further Cross-Examination of W. N. BRAGG resumed.

336

The witness produces the drawing he has made representing the hinge called for in X-Q. 245, and it is marked Exhibit "W. N. Bragg Drawing."

JO. LANE STERN, Notary Public.

X-Q. 248. All you know about these two exhibits, "Richard's Bill, Richmond Car," and "Booth's Bill, Richmond Car," is this, is it not, that you found these bills among the old papers or records of the Richmond, Fredericksburg & Potomac Road, the other day? 337

A. That's all, sir.

X-Q. 249. You don't know anything of your own knowledge how long they have been there, or whether they have any relation to the road or not?

A. No, sir. I don't know how long they have been there. I only know I found the names upon the books, and then referred to the vouchers and found those papers. 338

X-Q. 250. I see that the face endorsements upon both of these bills are in different handwriting and different ink. I suppose you do not know who made these endorsements, or when they were made?

A. No, sir, I do not.

Complainants' counsel objects to the introduction of the two bill exhibits of "Booth" and "Richards" as incompetent, under the deposition of this witness as now given. 339

X-Q. 251. You are the same W. N. Bragg who signed and swore to an affidavit in the case of these same complainants in a suit then pending against the Baltimore & Ohio Railroad, in the United States Circuit Court for the District of Maryland; the affidavit being made last fall in the month of October, at Richmond, before Mr. Stern, the present Notary taking your deposition?

A. I made such an affidavit.

X-Q. 252. Have you seen that affidavit or a copy of it since you made it? 340

A. I have not, sir.

X-Q. 253. You swore in that affidavit, did you not, that in May, 1846, the Richmond, Fredericksburg & Potomac Railroad had two sleeping cars in use upon

341 its railroad, moving between the city of Richmond and Acquia Creek, just answer whether you swore to that or not, without attempting to put in any subject matter that is not enquired about?

A. I did swear that there were two sleeping cars on the road.

X-Q. 254. You made that statement in the affidavit for the purpose of giving the Court to understand that those cars were run on the road at that time for sleeping cars, didn't you?

A. I never so. I never said that they ran as sleeping cars.

342 X-Q. 255. No, but you used such language in your affidavit as you did for the purpose of giving the Court to understand that they were used as sleeping cars, and you knew all about it?

A. I am not responsible for what the Court understood.

X-Q. 256. You swore in that affidavit that the upper berth when not used as such was raised up against the roof of the car, is that true?

A. That's true. It was raised up to the roof when it was not used.

343 X-Q. 257. You stated to several different parties in this city during October last, that some persons had stated that the car you have described had a depending ledge or board from the roof, behind which the forward side of the upper berth was secured when in place, among such parties being Mr. C. B. Tennant and Harvey Wilson, but that you did not know anything about it. Did you make that statement?

A. No, sir; but I'll tell you what I made, though; I made a statement that one of the cars did not.

344 X-Q. 258. You also made the statement at the same time and place to the same parties, that a man by the name of Worden had been around with you, and claimed to have built that car; and that Worden said that the inner side or edge of the upper berths, towards the wall, was beveled off, or cut slanting, but that there was nothing of the kind upon that berth; and that it would

have been useless to have put it there, or substantially to that effect, did you?

A. I have no recollection of any such conversation.

345

X-Q. 259. Will you swear that you didn't say substantially those words?

A. The word "*bevel*" was never mentioned, never thought of, so far as I know.

X-Q. 260. You stated to several different parties in last October, didn't you, in relation to the car claimed to have been built by Worden, that when Worden first spoke to you about the construction of that upper berth, you didn't remember exactly how it was constructed, or whether it could be moved or not, that you never had anything to do with that car, and knew nothing of it when it was used as a sleeping car; you made substantially those statements, did you not? 346

A. I did not make such statements; I only made a portion of them.

X-Q. 261. You interested yourself in that suit, and ran around with Worden, and attempted to induce witnesses to swear to affidavits in the case of the Baltimore & Ohio Road, didn't you?

A. I went around with Mr. Worden a little, but never tried to induce any one to swear to an affidavit, that I have any recollection of. 347

X-Q. 262. What compensation did you receive or were you promised directly or indirectly, arising out of your efforts in behalf of the Baltimore & Ohio Rail Road last Fall?

A. I wasn't promised anything; I told Mr. Worden that I expected to be paid for my services.

X-Q. 263. And Worden promised you that your expectations should be realized?

A. Of course.

X-Q. 264. About how much compensation or money in any shape, have you received so far on your expectations? 348

A. I have received my expenses from here to Norfolk and back, sir.

X-Q. 265. Yes, and that's all you have received, and
 349 all you have been promised, isn't it?

A. I have been promised to be paid for my services
 when the thing is ended.

X-Q. 266. About how much pay do you expect, and
 in what shape?

A. Well, I have never made a calculation what I expect; I expect reasonable pay for my services, and if I didn't get anything it wouldn't be the first case I was in and didn't get paid.

X-Q. 267. Have you not stated to parties in this city,
 since the giving of your affidavit, that the Baltimore &
 350 Ohio Rail Road hadn't done with you as they agreed to, and that if they didn't stand up to their agreement, you would show up that affidavit; or your testimony wouldn't be of any value to them; or words substantially to that effect?

A. No, sir; I didn't say so, because I never had any bargain with the Baltimore & Ohio Rail Road, or any agreement with them whatever.

X-Q. 268. Did you go to Norfolk in the interest of the Baltimore & Ohio Rail Road, or the defendants in this suit?

351 A. I went to Norfolk in the interest of the defendants in this suit.

X-Q. 269. When and what for?

A. February last, to take an affidavit of Col. Garnett.

X-Q. 270. You got your affidavit?

A. I did.

X-Q. 271. Was the affidavit made out before you went down there?

A. It was not.

X-Q. 272. What other work have you done for these defendants in this suit?

352 A. I have done nothing particular, except to speak to different parties and inquire if they knew anything about the sleeping car.

X-Q. 273. Mention the names of those parties?

A. I can mention the names of a good many parties; I mentioned to Mr. Woolfolk for one, Mr. Coleman, Mr.

Scott, Mr. Sampson, Mr. Andrews ; I think that is about all I recollect.

X-Q. 274. Will you swear that is all you recollect speaking to? 353

A. My word is sufficient without swearing to it.

X-Q. 275. And the fact that you are under oath makes no difference as to any statement you may here make. Does your last answer mean that?

A. As I am under oath I don't see the use of swearing to it again. You may say as I swear to the best of my knowledge.

X-Q. 276. Did you take affidavits from any of the parties you have mentioned? 354

A. I did not.

X-Q. 277. You have been engaged or interested since last fall in getting up or procuring excursions or excursion tickets upon different railroads ; have you not?

Defendants' counsel objects to this question, as incompetent and irrelevant.

A. I don't think this case has anything to do with my private matters. I am engaged in getting up an excursion to Europe. 355

X-Q. 278. And you have been engaged in getting up excursions around over this country, or attempting to?

A. My intention is to open a tourists' office in Richmond, for Europe and this country.

X-Q. 279. It can't be, can it, that any expected influence of the New York Central Railroad and its leased lines, or the Baltimore & Ohio Railroad and its leased lines, in relation to probable favors in this tourists' business, had anything to do with the assiduity and interest displayed by you, on behalf of those corporations, in looking up witnesses for them, and in travelling around over the country for them with no other compensation from them so far, except your fare to Norfolk? 356

A. I have never made applications to any of the roads for any such arrangements.

X-Q. 280. This man Worden you have mentioned is

357 the same man who has been sitting around in the room
with you during the entire time you have been giving
your deposition, is he not ?

Defendants' counsel states that at the beginning of this examination he offered to exclude any persons who might become witnesses in this behalf from the examination room if counsel for complainants objected to their being present, to which said counsel replied that he had no objection.

358 Complainants' counsel states that, while he informed defendants' counsel that while he would not insist upon the exclusion of any of his witnesses from the examination room, at the same time he stated to defendants' counsel if any such witnesses staid in the said room he would not waive his right to have this fact appear upon the record.

359 Defendants' counsel states that he understood complainants' counsel to say that he did not object to the presence of such persons, but did not want the fact of his consenting to it to appear upon the record. Had any other understanding been had by defendants' counsel, Mr. Worden would have been asked to absent himself during the examination of witnesses, as he is now requested to do.

A. He is the man, sir.

360 X-Q. 281. You and this same Worden have been together for some time past in attempting to defeat some car-brake patents, known as the Tanner and Stevens brakes, by getting up affidavits and procuring testimony showing prior use of those brakes in this locality a number of years ago ?

Defendants' counsel objects to this ques-

tion and the matter to which it relates, as incompetent, irrelevant and immaterial. 361

A. I had nothing to do with it, except that I was summoned to New York to answer as a witness. I never got an affidavit, and I never tried to get one.

X-Q. 282. Is it not a fact that your recollection and mental powers are considerably impaired from what they were twenty years ago?

A. My recollection is as good as it ever was.

X-Q. 283. You are quite confident, are you not, that you haven't got the first Woodruff Sleeper which ever ran on that road, mixed up with this old sleeping car in this deposition? 362

A. I am quite confident of that, sir.

RE-DIRECT EXAMINATION.

R-D-Q. 284. Did you ever measure the parts of the sleeping car you found on the Richmond, Fredericksburg & Potomac Railroad, when you went there in 1846, and which you altered in 1849, with a rule or other measuring instrument, so as to familiarize yourself with its various dimensions? 363

A. I dont think I ever measured it specially.

R-D-Q. 285. Then the dimensions you have given of the various parts of that car have been estimates made upon memory, have they not?

A. Yes, Sir, of course, from memory.

R-D-Q. 286. Did you ever operate the berths of that car, or put them into position to find out how they operated?

A. I never operated them myself, but I have seen them operated.

R-D-Q. 287. Was there a stove or a stove place in that car? 364

A. There was.

R-D-Q. 288. Whereabouts?

A. I think it was in the corner, near the water closet in the gentlemen's apartment.

365 R-D-Q. 289. You have said in answer to x-q. 172, describing the strips behind which the edge of the upper berths passed when raised, that such strips run parallel with the car; do you mean parallel with the car sides, or car ends?

A. With the car sides, of course.

366 R-D-Q. 290. The meaning of x-q. 179, as I understand it, is an inquiry as to the length of a line drawn from a corner formed by the car sides and roof to the upper edge of the outer side of the upper berth when in its horizontal or night position, did *you* so understand it in answering it, when you said, "I would say some sixteen or eighteen inches"?

A. I meant to say from the berth to the roof of the car, nearest the side of the car.

R-D-Q. 291. Understanding the cross-question 179 as I do, what would be your answer?

A. I suppose it would be about two feet, as near as I can remember.

367 R-D-Q. 292. You say in answer to X-question 253 that there were two sleeping cars at the Richmond, Fredericksburg & Potomac Railroad when you went there in 1846; and I suppose that the description of what we have called here the car like exhibit "Richmond Car," relates to *one* of those cars, am I right?

A. You are right, sir.

R-D-Q. 293. Did you alter both of these sleeping cars?

368 Objected to as incompetent and not re-direct examination upon any matter developed in a cross-question; the answer of the witness relating in any manner to two sleeping cars being forced by himself in a voluntary statement, and in direct opposition to the statement of complainants' counsel, that he wished him to answer as to no subject matter except directly as to the subject of inquiry.

A. I assisted in altering both.

R-D-Q. 294. This Harvey Wilson, whom you have been asked about, is known to you, is he not?

A. I am not acquainted with him, sir. I know him 369
by sight.

R-D-Q. 295. Has he not repeatedly sought to engage you in conversation about these old sleeping cars?

A. I think he was at my place once. He brought a paper he wanted me to sign?

R-D-Q. 296. What kind of a paper?

A. I suppose you might call it an affidavit. I don't know.

R-D-Q. 297. Did he ask you to sign it?

A. He did.

R-D-Q. 298. Was it written out when he came to you? 370

A. It was.

R-D-Q. 299. Where is the paper referred to?

A. I left it in the desk in my brother's store.

R-D-Q. 300. Will you produce it?

A. I will if I can find it.

R-D-Q. 301. Have you looked for it?

A. I have not.

R-D-Q. 302. Please do so, and bring it here for use in this cause.

A. I will if it can be found. 371

R-D-Q. 303. Are the exhibits "Booth's Bill, Richmond Car," and "Richard's Bill, Richmond Car," in precisely the same condition as when found in the archives of the railroad company?

A. After examining them, yes, sir, they are in the same condition as when found.

R-D-Q. 304. I am the man who has promised you compensation in this matter, am I not?

A. Yes, sir.

R-D-Q. 305. Have I promised you any emolument or advantage except the payment of ordinary witness 372
fees during your examination, and a reasonable compensation for so much of your time as should be used in searching the railroad records, and looking up other facts concerning the old sleeping cars of the Richmond, Fredericksburg & Potomac Railroad.

A. That's all you promised, sir.

373

The further examination of this witness is suspended until to-morrow at 10 A. M., to enable him to search for the "Wilson" paper.

May 13—Met pursuant to adjournment.

Present—Same parties as yesterday.

Re-direct examination of W. N. BRAGG resumed.

374

R-D-Q. 306. Have you found the "Wilson paper"?

A. I did not.

R-D-Q. 307. Have you looked carefully for it?

A. I did.

R-D-Q. 308. Describe its contents and character, as near as you can?

A. I paid very little attention to it. I read it over, but I declare I couldn't repeat a great deal of it. I wouldn't sign it because there was an objection to some clause of it.

375

R-D-Q. 309. State what the objectionable clauses or matters were?

A. One was, it stated that I never had rode in the car.

R-D-Q. 310. Were you asked to sign and swear to it?

A. I was asked to sign it.

R-D-Q. 311. Did you show it to any one?

A. I showed it to S. W. Worden.

R-D-Q. 312. Did it purport to relate to the car you have testified about here?

376

A. It related to the sleeping cars. I don't know whether it was this one or the other one.

R-D-Q. 313. What do you mean by "the other one"?

Objected to as incompetent, it being

only such proper subject matter as should have been called for in the direct examination. 377

A. I mean there were two sleeping cars on the road.

R-D-Q. 314. Was the matter composing this "Wilson paper" written correctly?

A. No; there were some blank spaces in it, I think.

R-D-Q. 315. Were you asked to fill out those blank spaces, or to sign the paper as it stood?

A. I don't think the filling out was mentioned; but I was asked to sign it.

R-D-Q. 316. What became of the berths and fixtures taken out of the sleeping cars by you and your assistants in 1849, which were put up over the shop? 378

A. I think when Major Myers took charge of the road he had the whole shop cleaned out, and had all the old sash, seats and frames broken up.

R-D-Q. 317. Did those fixtures all belong to one car?

A. The trimmings of each car were put up there when they were stripped out.

R-D-Q. 318. What do you mean by each car?

Last objection repeated. 379

A. I mean the two sleeping cars, as well as the trimmings of other cars.

And further this deponent saith not.

W. N. BRAGG.

WM. N. BRAGG, again produced as a witness on behalf of the defendants, being duly sworn, deposes and says 380 as follows:

Q. 1. Are you the same W. N. Bragg who has heretofore testified in this cause?

381 The examination of this witness objected to as incompetent, upon the ground that he has heretofore been examined in chief and cross-examined in this case, and that a further or second examination of this witness is inadmissible, except by order of Court upon cause shown.

Q. 2. In your former deposition, just concluded on cross-examination, you stated that there were two sleeping cars used by the Richmond, Fredericksburg & Potomac Railroad when you went there in 1846, did you not?

A. I stated that there were two sleeping cars there.

Q. 3. And in that deposition you very fully described one of those cars. Will you now please describe the construction of the other car?

A. There was considerable difference in the two cars in the construction.

Q. 4. Well, describe the car last inquired about?

A. That car was stationary berths, except the middle one.

Q. 5. How many berths did it have?

383 A. I think there five rows on each side.

Q. 6. How many berths high?

A. Three, counting the seat as one.

Q. 7. Describe the upper berth?

A. The upper berth was made into a frame that came out and rested on a post at each end—and rested to a post at each end.

Q. 8. Was it movable?

A. It was fastened to a post.

Q. 9. One post?

A. Post at each end.

384 Q. 10. What kind of a post?

A. It was a post made of ash timber,

Q. 11. I mean what kind of a post as to all of its uses; that is, was it simply used to support the upper berth and nothing else?

A. It supported the middle berth when raised.

Q. 12. Then the middle berth was not stationary.
Am I right?

A. The middle berth lowered to form the back of the day seat. 385

Q. 13. How much above the point of attachment of the upper berth to these posts did they extend; if at all.

A. They extended to the ceiling.

Q. 14. Where was the other end of them?

A. On the floor.

Q. 15. Did this car have any cushions in it?

A. The cushion was formed to the seat and back and stuffed; I never saw any cushions to that car; it was trimmed as the back of a sofa or lounge, for instance. 386

Q. 16. Do you mean that the cushions were fast to the seat and back frames?

A. I mean they were trimmed and stuffed to the frames.

Q. 17. Were they fast or loose?

A. They were fast.

Q. 18. Did the upper berth have any cushion or stuffing?

A. It was stuffed in like manner as the middle one.

Q. 19. Were there any partitions in this car?

A. None except the partition between the ladies' apartment and the gentlemen's. 387

Q. 20. Was this car used for business purposes on that road?

A. Yes, sir; it was used to carry passengers.

Q. 21. What became of it?

A. It was finally pulled to pieces when worn out.

Q. 22. Was it ever altered to your knowledge from a sleeping to an ordinary car?

A. The top berth and post were taken out.

Q. 23. One top berth and one post, is that what you mean? 388

A. I mean all posts and all top berths.

Q. 24. Who did it?

A. I helped do it, sir.

Q. 25. What became of the top berths and posts taken out of this car?

A. The berths were put up-stairs over the shop and the posts were thrown in the scrap pile.

389 Q. 26. When was this?

A. I think in '49.

Q. 27. Was there any night train running on that Railroad when these cars were altered by removing their sleeping appurtenances?

A. There was none.

Q. 28. How long was it thereafter when the running of night trains was re-commenced? State the year?

A. In '52, I think, sir.

Q. 29. Any stove in this car, or stove place?

390 A. There was a stove in it.

Q. 30. What kind of windows did it have? I mean as to shape?

A. There were windows about square, a little higher than it was wide, of course, and the sash had four glass in it.

Cross-examination by C. K. OFFIELD, Esq.

X-Q. 31. Any glass or gothic windows above these square windows in that car?

391 A. Yes, sir, there was—gothic.

X-Q. 32. This car with fixed upper berths and supporting posts was on the Richmond, Fredericksburg & Potomac Road when you went there in 1846, was it?

A. It was.

X-Q. 33. It ran as a day passenger coach between Richmond and Acquia Creek on that road until you destroyed its internal construction as to berths and posts in 1849?

A. At times it did.

392 X-Q. 34. Where did the Richmond, Fredericksburg & Potomac Road get this fixed upper berth sleeping car you have described?

A. I don't know, sir.

X-Q. 35. Have you now described all the sleeping cars that you intend to locate on that Richmond, Fred-

ericksburg & Potomac Rail Road since May 1846, or all that you know anything about?

A. That's all I know anything about until after the war. 393

X-Q. 36. Were those two alleged sleeping cars described by you both destroyed as to their sleeping capacity at the same time?

A. They were both destroyed in '49, I think, sir.

X-Q. 37. About the same time?

A. I don't think there was very much difference in the time.

X-Q. 38. Were there any partitions of any kind separating these berths which were supported by the posts you have described in the last car you have described? 394

A. No partitions.

And further this deponent saith not.

W. N. BRAGG.

WARNER LINDSAY, witness, produced on behalf of the defendants, being duly sworn, deposes and says as follows: 395

Q. 1. State your name, age, occupation and residence?

A. Warner Lindsay, about 63 years of age, I keep a little grocery on Navy Hill, Richmond.

Q. 2. Were you ever employed by any railroad company, if so, give its name?

A. I came here in 1841, went to the Fredericksburg depot, and staid there twelve years on a stretch. The first place I ever lived at, staid there about twelve years, in Richmond.

Q. 3. The full name of the railroad company that employed you was what? 396

A. There are a good many of them, but most of them are dead. The old railroad contractors who were there, I can call the names of most of them.

Q. 4. Do so?

397 A. Mr. Nicholas Mills, Mr. Macfarland, Mr. Murford.
It has been a long time since then, and I have to study about it.

Q. 5. Did you know these men worked for the Richmond, Fredericksburg & Potomac Railroad Company?

A. These men are stockholders I am telling you about.

Q. 6. Who did you get your pay from?

A. I got it from Mr. Sharpe, the man who employed me there—the transportation agent of the road. He employed me and paid me.

Q. 7. What was the name of the road?

398 A. Fredericksburg & Potomac Railroad. That's what it was named when I lived there.

Q. 8. Wasn't it called the Richmond, Fredericksburg & Potomac Railroad?

A. It was, but I didn't put "Richmond" in there when I spoke just now.

Q. 9. What work did you do at the depot of that road?

A. I staid at the office, attended to the clerks, see to the baggage, and all, and rang the bell when the cars came in sight.

399 Q. 10. Did you ever clean cars when they were in the depot?

A. Yes, sir; after the cars came in and the passengers got out I would go in and help the hands to clean out.

Q. 11. When you first went there was there any such thing as a sleeping car on that road?

400 A. Yes, sir. There was one; only one that I recollect anything about. That was running before I got there, I saw it after I got there. There was only that car there when I got there, and I noticed it because it was a new thing, I had never seen one before.

Q. 12. Can you remember, and if so, tell us how this sleeping car had its berths made?

A. There were three berths on a side, one above the other. The bottom one was opened wide enough for two persons to lie on, the middle one was for a single

person, and the top one was for a single person. The top one was let down and had some pieces for it to rest upon when you got into it to sleep, and it was taken up in the day and hooked up to the side of the car, leaning up in this way—the witness holding his elbow against the wall with his hand about a foot away from the wall. 401

Q. 13. Did you ever see anybody lying down in the berths of this car?

A. Yes, sir.

Q. 14. Did you ever ride out on the road in this car?

A. I never rode on that car, but I have been out on the road when that car was a part of the train; the white folks were in it. 402

Q. 15. Were there any cushions or pillows about those berths?

A. There were small pillows, and little small mattresses, made out of hair, I think. You didn't seem to understand me about that top seat, that top berth, the top berth was just so: here the witness took a book and placed it at right angles to the wall, and said, that's the way it was when you got in it, and when you got out you raised it just so, raising the outer edge of the book up until the angle formed by it and the wall was some 30 to 40 degrees. Behind here the pillows were put. Of course it had hinges to it. It didn't work so close against the wall that you couldn't work it up and down. The seat would have to have hinges to it so as to work up and down. 403

Q. 16. When did you go away from the road?

A. You can tell that yourself. I went there in 1841, and staid there twelve years.

CROSS-EXAMINATION BY J. K. OFFIELD, Esq.

X-Q. 17. What time in the year 1841 did you go to work at the depot of the Richmond, Fredericksburg & Potomac Railroad in this city? 404

A. First of January, sir.

X-Q. 18. Who owned you at that time?

A. A man by the name of Robert Hudgin.

X-Q. 19. Can you read or write?

405 A. No, sir. I cannot.

X-Q. 20. This sleeping car you have tried to describe, was the only sleeping car that ever run, of the Richmond, Fredericksburg & Potomac Railroad, to your knowledge, wasn't it?

A. Yes, sir. I never knew any but that one.

X-Q. 21. Did it run on the day train when you went there?

A. Well, now, I tell you right up and down, I am not certain. I think it went out at night and came back next day, I am not certain about that part.

406 X-Q. 22. You never saw any person laying down in that car except as you would lie down on a lounge or a sofa with clothes on, did you?

A. I did. In the day people would go in there and lay down with their clothes on. They had a long rod running from one end of the coach to the other, and there was a curtain for every berth. They had the curtains split, one half would go one way and the other the other, and they had brass knobs to hang them over, and when any person would lie down they would take them down to hide them.

407 X-Q. 23. These brass knobs were on small posts at the ends of the bunk or berth that ran from the floor to the ceiling, were they not?

A. Near the front part of the berth where the curtains hung. They were not knobs, they were brass hooks.

X-Q. 24. And these brass hooks were fastened or screwed into small posts which ran from the floor to the ceiling at the ends of the berth, were they not?

A. Yes, sir.

408 X-Q. 25. Were there any partitions in that car at any place except the partition which ran across, near one end of the car, to divide off the ladies' apartment?

A. Yes, sir, there was a partition between every berth, that ran up betwixst every berth, then there was the partition for the ladies' apartment, which had a settee and water closet in it.

X-Q. 26. That partition which you say ran up betwixst every berth was about six inches or a foot wide, and only ran to the bottom of the upper berth, did it? 409

A. Near about a foot wide ; now, about a foot wide.

X-Q. 27. And it ran up only to the under side of the upper berth when that berth was in position to be slept in, didn't it?

A. Yes, sir, that partition, though, was all in one piece from the bottom of the floor up to the top of the coach. The partition of the ladies' apartment was stationary, and had a sliding door with a curtain hung up in front of it. That's all I recollect about the car now.

X-Q. 28. You never saw any person up in one of those upper bunks or berths, did you? 410

A. Yes, sir ; they never used to get in them until night, and I never was on the car at night.

X-Q. 29. Is it not a fact that the only use that was ever made of those upper bunks or shelves or berths was for the passengers to throw up their small baggage and bundles in when riding in the car, isn't that so?

Objected to as misleading and deceptive, and as assuming that the witness has knowledge of the actual use of these berths, when he has just said that he was never out on the road when they were used. 411

A. It wasn't made for that purpose only ; they knew the passengers would fill up the lower berths first, and in case of necessity would use these, and if they didn't, the passengers would throw up their hats and bundles in there.

X-Q. 30. Those upper berths or shelves were always in position whenever you saw them, so that the passengers could store away their small bundles and satchels, weren't they? 412

A. Yes, sir ; but I don't think you ought to call them shelves.

X-Q. 31. Who told you lately about that long rod

and curtains in front of the berths, Mr. Bragg or Mr.
413 Worden?

A. If I ever told the truth in my life, they never told me a word in their lives; I saw them myself with these eyes.

X-Q. 32. You don't know of your own knowledge, do you, so you can swear positively, that one of those upper berths was ever fastened up to the top of the car?

A. They were, sir; they were hooked up there; they had brass hooks, and they were thrown back and hooked up there.

X-Q. 33. That is, they were hooked in place or fast-
414 ened in place when passengers wanted to sleep there, isn't that it?

A. Yes, sir; when they wanted to go to bed in there they let down, and had a piece for them to rest on.

X-Q. 34. Did you ever see a model or something made to represent that car?

A. I never saw nothing but that old car, that was the first one, too, I ever saw like that.

X-Q. 35. Who got you to come up here?

A. Mr. Worden; he told me they wanted me.

X-Q. 36. You had forgotten pretty much all about
415 that old car, or that there ever was such a car, until Worden talked with you, hadn't you? Now just answer that question up fair and square.

A. He asked me if I recollected the time that car was built; I told him I didn't recollect when it was built, but I recollect when it was running.

X-Q. 37. He told you he built it, didn't he?

A. He said it was built up there in the Fredericks-
burg shop, but he didn't tell me he built it; but he worked up there at that time; he was working there before I came to Richmond, and they said he built it,
416 but he wasn't there at the time.

X-Q. 38. He told you how he built it, didn't he?

A. No, sir; he did not tell me.

X-Q. 39. He told you some things about how the car was built in your talk the other day, didn't he?

Objected as assuming that Worden has talked with this witness, which has not been proven to be so. 417

A. If there is truth in man he never told me how those cars were built.

And further this deponent saith not.

Witness
JO. LANE STERN.

his
WARNER X LINDSAY.
mark.

418

STEPHEN HUNTER, witness produced in behalf of the defendants, after being duly sworn, deposes and says as follows :

Q. 1. What is your name, age and occupation ?

A. Stephen Hunter, sixty-two years of age, proprietor of St. Claire Hotel.

Q. 2. Were you ever connected with the railroad ; if so, in what capacity, and how long ?

419

A. I was agent of the Louisa Railroad, Frederick's Hall Station, Louisa County, from the year 1838 to 1841 ; and with the same road, under its different names, from 1847 to about five years ago. During the year 1847 I was appointed agent of the then Virginia Central Railroad ; I think that was its title at that time. My office was at the Richmond, Fredericksburg & Potomac Depot in Richmond. In the year 1850 the road completed its extension from Hanover Junction to Richmond, and the office was moved to the depot of the Virginia Central Railroad in Richmond, and I was in 420 the employment of that company as depot agent and general freight agent until about five years ago.

Q. 3. Please look at the model now shown you, and say whether or not you ever saw a sleeping car with

sections of berths constructed alike or substantially alike the said model ?

421

Objected to as incompetent as the deposition now stands, and as leading and suggestive.

A. I remember some time—I can't recollect the date—while I was agent at Frederick's Hall a sleeper was run up there. From my recollection the arrangement was similar to this.

The model is again offered in evidence and marked as before, Defendants' Exhibit "Richmond Car."

422

JO. LANE STERNE,
Notary Public.

Q. 4. Run up to Frederick's Hall from where ?

A. I suppose from Richmond ; I don't know.

Q. 5. Was it connected with a regular train from Richmond ?

A. The train was from Richmond, I think. It has been so long I can't recollect with positive certainty.

423

Q. 6. What road did it come off of ?

A. The Richmond, Fredericksburg & Potomac Railroad.

Q. 7. Did you examine that sleeping car then ?

A. I examined the general arrangement of it.

Q. 8. Did you go into the car at that time ?

A. I did.

Q. 9. Did you see its berths operated at that time, or were you shown how they operated ?

A. The conductor exhibited the car to us. There were several persons in there.

424

Q. 10. Did he show you how the berths were changed from their night arrangement to the day arrangement ?

Objected to as leading and suggestive.

A. He did.

Q. 11. How was the upper berth operated; that is, what position did it have when it was to be slept on, and what position did it have when it was not to be slept on? 425

A. When not slept on it was swung up to the ceiling of the car and taken down when it was to be used as a berth.

Q. 12. How was the middle berth operated for sleeping as well as for day use?

A. The middle berth was fastened to the side of the car, by hinges I suppose—I didn't notice—and was raised to a horizontal position when used as a sleeping berth. In day use it went to the back of the car and formed a sort of a back to the seat. I don't recollect, except the general arrangement of it. 426

Q. 13. Please describe, as well as you remember the same, the way the lower berth operated?

A. The lower berth opened into the aisle of the car and formed a double berth.

Q. 14. That would make three longitudinal berths high against the side of the car. Was there any more than one such section or tier of berths in that car?

A. There was. I don't remember how many. 427

Q. 15. Were they on one or both sides of the aisle of the car?

A. They were on both sides, except a portion of one side, I think, was cut off for a ladies' apartment.

Q. 16. Were these berths separated from each other in any way at their head and foot ends?

A. They were. They were separated by stationary partitions extending out as wide as the seats.

Q. 17. How high up did those partitions extend?

A. I can't remember whether they reached to the top of the car or not. 428

Q. 18. Did they go back against the side of the car?

A. I think they did.

Q. 19. Did they go down to the floor of the car?

A. Yes, I think they did.

Q. 20. Do you know whether there was a stove place
429 or a stove in that car?

A. I don't remember.

Q. 21. Was there anything at the head and foot of
the folding out part of the lower berths?

A. There was nothing stationary there. I think there
was a temporary piece put in there. I don't remember
how it was done. There was nothing stationary beyond
the seat.

Q. 22. Having seen me put the lower berth of the
model exhibit "Richmond Car" in its extended po-
sition, and adjusted the boards marked "A," at the ends
430 of the extended position, please state whether your
memory recalls those little boards in that car?

A. I don't remember. I know there was something
put up there, but I can't call to mind how it was fixed,
or how it was arranged.

Q. 23. The Louisa Road, on which you saw this car,
was operated at that time by the Richmond, Freder-
icksburg & Potomac Railroad, so as to practically be a
part of the latter road, was it not?

A. I suppose it was operated by the Richmond, Freder-
icksburg & Potomac Railroad. I was appointed agent
431 by the Board of Directors of the Louisa Railroad, but
made my settlements with the Richmond, Fredericks-
burg & Potomac Railroad.

Q. 24. The rolling stock of the Louisa Railroad be-
longed to the Richmond, Fredericksburg & Potomac
Railroad at that time, did it not?

A. I believe it did.

Q. 25. Was that the first sleeping car you ever saw?

A. It was.

Q. 26. Did you ever see it in use upon the Richmond,
Fredericksburg & Potomac Railroad?

432 A. I remember one occasion when I saw it on that
road after that; and after I moved to Richmond I saw
it in the car sheds of the Richmond, Fredericksburg &
Potomac Railroad in Richmond.

Q. 27. When you saw it on the road of the Rich-

mond, Fredericksburg & Potomac Railroad, I mean out on the road, was any passengers using it to sleep in? 433

A. There was not. It was during the day time, and the passengers were using it as a passenger coach.

Q. 28. Did you know of its being used for sleeping purposes?

A. I have no recollection of having seen it used for that purpose.

Q. 29. Was there any other sleeping car in use upon the Richmond, Fredericksburg & Potomac Railroad prior to 1850?

A. Yes, there was another.

Q. 30. Do you know anything about how it was constructed? 434

A. I never examined but the one closely, the first one being such a novelty. I remember that very distinctly, and it, the novelty, having passed off, I never examined this one closely. I think it was somewhat similar; there may have been differences which I didn't notice.

Q. 31. Do you know what the purpose was of running these sleeping cars on that railroad?

A. I do not.

435

CROSS-EXAMINATION BY C. K. OFFIELD.

X-Q. 32. You have had before you during your direct examination this model Defendants' Exhibit "Richmond Car," haven't you, and every time you were asked a question by defendants' counsel as to the construction of that old sleeping car which you first saw about forty years ago, before you answered the question, you first looked at the model, didn't you?

A. Sometimes I did and sometimes I did not.

X-Q. 33. This wasn't the first time to-day that you 436 have seen a model, either this one or one smaller, which was stated to you to represent a section of a sleeping car which you first saw about forty years ago?

A. The only model I have seen, I think, is the one that was shown me to-day. I saw that once before, but

merely glanced at it; never examined it until it was
437 shown me here to-day, and had never seen it but the
one time before.

X-Q. 34. Have you been shown before to-day any
picture or drawing purporting to represent this sleeping
car?

A. I have not.

X-Q. 35. What was the name of the conductor who
exhibited that sleeping car to you at Frederick's Hall
Station when you first saw it in 1838, or between that
year and 1841?

A. B. F. Darracott.

438 X-Q. 36. Where is he?

A. Dead.

X-Q. 37. How far was it from Frederick's Hall to
Richmond, the route this sleeping car run?

A. About forty-five miles.

X-Q. 38. Did this sleeping car make regular trips be-
tween Frederick's Hall and Richmond between 1838
and 1841?

A. It did not. It was the only trip it made, as well
as I remember, while I was at that station.

X-Q. 39. What was the occasion of that trip?

439 A. I do not now recollect.

X-Q. 40. Was it in the day or night time this sleeping
car was there?

A. It was in the day time.

X-Q. 41. Where did you go and what did you do after
you left Frederick's Hall Station in 1841?

A. I went to Louisa Court House, and remained
there until 1844. I was in the County Clerk's office.
I came to Richmond in 1844, and was in the dry goods
business until I went back to the railroad in 1847.

440 X-Q. 42. On which side of this old sleeping car you
saw at Frederick's Hall was the ladies' apartment
arranged, and how much space did it occupy?

A. I don't remember which side of the car. I think
it occupied about the space of a berth.

X-Q. 43. Were there berths on the other side of the
car opposite the ladies' apartment?

A. I think there was one. I don't remember that there was more than one.

X-Q. 44. Was that a lower, a middle or an upper berth? 441

A. A lower berth. I don't remember whether there was any other.

X-Q. 49. And you entered this ladies' apartment from a door in its side, opposite this lower berth, did you?

A. The ladies' apartment, I think, was entered by a door in the side.

X-Q. 50. Was there any water closet in that car?

A. My answer alluded to the water closet, the opposite side being a berth.

X-Q. 51. Where was the ladies' apartment then, if any, in that car? 442

A. The length of one berth was apportioned off across the car; one side of that space cut off was a berth or seat, the other side a water closet.

X-Q. 52. Was there any water closet in the gentlemen's apartment of that car?

A. I don't think there was.

X-Q. 53. Are you confident, so that you will swear under oath, that there was a partition in that car at any place except the partition forming the ladies' apartment and the water closet? 443

A. I would not swear positively to any of the minutiae of the arrangement of the car at this length of time. The general arrangement of it made an impression upon my mind from its novelty, which is very distinct, and that was the only thing I was interested in examining, and do not think any other portion of the car was partitioned off as the ladies' apartment was.

X-Q. 54. Don't you know now, after having your attention specially called to it, that the berths of that car outside of the ladies' apartment were arranged between posts about six feet apart extending from the floor to the ceiling of the car at the outer edge at the lower berth or seat of the car, and that these berths were arranged or fastened in position for use at night upon those posts? 444

445 A. As I said before, I do not recollect with sufficient certainty to swear positively how these berths were supported or fastened. The main thing that attracted my attention was how sleeping apartments could be arranged so that persons could sleep upon them while the train was in motion.

X-Q. 55. And you don't recollect positively whether these berths in the gentlemen's apartment were separated by partitions running up between them, or whether they were separated by and fastened to posts; so that you can swear positively either way?

446 A. I am satisfied that they were separated, but I can't swear positively how it was done. I recollect the front seat when turned over, that portion of it was separated by a board or something put up, so as to fill out the entire berth, make a separation between the berths.

X-Q. 56. But you don't recollect distinctly whether it was a post or a partition that separated those berths in the gentlemen's apartment?

A. I could not swear positively, but I think it was a complete separation.

447 X-Q. 57. Will you swear positively that that upper berth in that car was not fixed and stationary, extending out to and nailed fast to a post running from the floor to the ceiling; and that usually the only use made of that upper berth was for the purpose of stowing away the baggage for the passengers when you first saw that car?

448 A. I would not swear positively to anything that occurred as long ago as forty years, only to the best of my recollection; and in this case from the impressions made upon my mind, by the novelty of the car; those impressions seemed to be as fresh, and more so than many things which have occurred only a short time past; and my recollection is that that upper berth when not in use as a sleeper, was suspended to the top of the car, fastened to the top of the car.

X-Q. 58. This general impression of novelty that you have mentioned several times was the novelty of seeing a railroad car fitted up with bunks and berths arranged

on each side of the car, in which persons could lie down and sleep or rest, is that it?

A. Something of that sort.

449

X-Q. 59 The inside of that car when these bunks were made up, looked a good deal like the inside of a canal boat, or the cabin room of a small river packet, didn't it?

A. It did not resemble any that we have in our waters, very much.

X-Q. 60. How long after you first saw that car was it before you saw it again, if at all?

A. I think I saw it again in about a year or such matter, and then I saw it again in 1847 or 1848.

450

X-Q. 61. Where did you see it in about a year?

A. I saw it on the Richmond, Fredericksburg & Potomac Railroad

X-Q. 62. Did you ever see it more than those three times?

A. Yes. I saw it frequently while I was at the Richmond, Fredericksburg & Potomac depot.

X-Q. 63. What depot?

A. The Richmond, Fredericksburg & Potomac at Richmond.

X-Q. 64. How many years did you see that car after 1847?

451

A. I don't remember how long. I know it stood under their car sheds for some time after I was stationed at the depot. I mean car sheds in Richmond.

X-Q. 65. But the only time you ever paid any attention to its internal construction, as you have described, was at Frederick's Hall?

A. That was the only time I examined it very particularly.

X-Q. 66. Who was present upon that occasion except yourself and the conductor?

452

A. I don't recollect now all who were there. Dr. William Pendleton was one. I wouldn't be so certain, but I think Nat Harris was there. I am not positive. The reason I recollect that Dr. Pendleton was there was because he came to see me sick.

X-Q. 67. Both of the parties you have mentioned are dead, are they not?

453 A. No, sir. Dr. Pendleton is dead, Harris is not.

X-Q. 68. Do you know S. W. Worden?

A. I haven't known him until within some few months past. I had lost sight of him. I remember when he was at the railroad.

The further taking of this deposition is continued until to-morrow at 10 o'clock.

JO. LANE STERN, N. P.

354 Met pursuant to adjournment May 13, at 10 o'clock,
A. M.

Cross-examination of Stephen Hunter resumed.

X-Q. 69. This Worden you mentioned in your last answer is now stopping with you in this city, is he not?

Objected to as incompetent, irrelevant and immaterial.

455 A. Yes, stopping at my hotel.

X-Q. 70. Have you talked with any person about this case or that old car since adjourning yesterday evening?

A. I had a short conversation with Mr. Munson this morning, a few moments, about the case, not particularly about the car.

X-Q. 71. Mr. Munson was the only person whom you spoke to, or who has spoken to you about the case or the car since you last left the stand, isn't he?

A. Yes.

456 X-Q. 72. Who first spoke to you about the construction of that old car you have attempted to tell about?

A. Captain Bragg.

X-Q. 73. Did he tell you how that old sleeping car was constructed, according to his idea, when he first talked with you?

A. He asked me if I remembered a sleeping car that was on the Richmond, Fredericksburg & Potomac Railroad while I was stationed there. I told him that I remembered it, and I think I described to him its construction, as I have stated in my deposition, before he made any general description of it to me. 457

X-Q. 74. Question repeated.

A. I think he explained a portion of it, and we compared our views in regard to it to some extent during the conversation.

X-Q. 75. That was the first time you had had your attention called to that sleeping car since you saw it, nearly forty years ago, was it? 458

A. I don't remember, when my attention was last called to it, before that conversation, certainly not for a great many years.

X-Q. 76. Then you had forgotten it until your recollection was refreshed by this conversation, hadn't you?

A. I had.

X-Q. 77. How many of those lower seats or berths in that old "sleeper" at Fredericks Hall did the conductor pull out or make up so as to show you how they worked? 459

A. Only one, I think.

X-Q. 78. How long did you remain at the Richmond Depot of the Richmond, Fredericksburg & Potomac Railroad after 1847?

A. I remained there until January, 1850.

X-Q. 79. Where did you go then?

A. I went to the depot of the then Virginia Central Railroad, now the Chesapeake & Ohio Railroad, in Richmond, when its eastern terminus was extended. I remained there about fifteen years.

X-Q. 80. When and where was the first regular sleeping car you ever saw, used for sleeping purposes? 460

A. I suppose he means after those on the Richmond, Fredericksburg & Potomac Railroad. I think the first I saw afterwards were on the Baltimore & Ohio Railroad.

- X-Q. 81. When?
- 461 A. I do not remember the time, but it was shortly after I left the Richmond, Fredericksburg & Potomac Railroad Depot.
- X-Q. 82. Did you sleep in one of those cars?
- A. I did not.
- X-Q. 83. Examine it, as to its internal construction?
- A. I did not particularly. I was in Baltimore on other railroad business, and was merely shown through the car.
- X-Q. 84. You can tell how those berths were arranged and constructed, can't you?
- 462 A. No, I cannot. I have an indistinct recollection of it.
- X-Q. 85. You were familiar with the sleeping car known as the Woodruff Car, run over these roads about twenty years ago, were you not?

Objected to as incompetent, irrelevant and immaterial, as assuming a fact not proven, and as not proper cross-examination, or relating to matter brought out in the direct examination.

463

A. I was not. My business was altogether in the freight department, and I travelled very little.

X-Q. 86. Can you give the internal arrangement or construction of any other sleeping car you ever saw in your life, except the one you have attempted to describe?

A. I am satisfied I cannot, as well as I can the one I have described; I don't think any other made as much impression upon my mind as the first I saw.

464

RE-DIRECT EXAMINATION.

R-D-Q. 87. The model, Defendants' Exhibit "Richmond Car" has been out of your sight, boxed up, during your cross-examination, has it not?

A. It has.

R-D-Q. 88. And is now out of your sight, is it not? 465

A. It is.

R-D-Q. 89. And during your direct examination this model was placed nearly behind you on the table, immediately after you were first asked to look at it, is that not true?

A. It was placed to my side, a little in the rear.

R-D-Q. 90. So that you would have to turn your chair to see it. Was it not?

A. I had to turn my head a little to see it. I had to turn my head or body a little to see it.

R-D-Q. 91. And is it not true that you did not examine any of its parts except when counsel called your attention particularly to the little removable boards in question 22? 466

A. No, I examined the lower berth, and I think the upper one before he fixed those little boards and called my attention to them.

R-D-Q. 92. Well, that was when the model was first brought out, was it not?

A. It was.

R-D-Q. 93. When you say, speaking of the upper berth, when not in use as a "sleeper" it was fastened or suspended to the top of the car, what do you mean? 467

A. I mean that the upper berth was fastened to the body of the car, the side of the car, and the outer edge of it was fastened up to the ceiling of the car, making an angle, I suppose, of about forty-five degrees.

R-D-Q. 94. You have stated that you had a short conversation with Mr. Munson, counsel in this case, this morning, did that conversation extend over a minute or a minute and a half?

A. It was very short. I don't suppose it extended over a minute. I was called off immediately the conversation commenced almost. 468

R-D-Q. 95. Was not the whole of that conversation to the extent and effect, that although no man can swear positively to any old fact, it was proper and right

469 that you should swear to whatever you remembered at the present time about that old sleeping car?

A. That was the substance of the conversation.

R-D-Q. 96. Does your mind at the present time recall that old car so that you are able to swear to its construction and operation, as you have done in this deposition?

A. From my memory at present, I can, as to its general arrangement and construction.

And further this deponent saith not.

470

S. HUNTER.

The further taking of these depositions is continued until to-morrow at 9 o'clock, A. M.

JO. LANE STERN, Notary Public.

MAY 14, 1881.

471

Met pursuant to adjournment.

Present—Same parties as before.

CHARLES HARTWELL, witness produced on behalf of defendants, deposes and says as follows, being duly sworn :

Q. 1. What is your name, age, residence and occupation?

A. Charles Hartwell, age 63, Richmond, Va.; dry goods merchant.

472

Q. 2. How long have you been engaged in that business in this city?

A. I have been engaged in business thirty odd years. I have resided in Richmond and its suburbs 42 years (forty-two). I was in the dry goods business from 1839 to 1857.

Q. 3. Did you travel over the Richmond, Fredericksburg & Potomac Railroad between 1839 and 1850?

A. Yes, sir.

473

Q. 4. Did you ever see a sleeping car in use upon that road during that period?

A. Yes, sir.

Q. 5. Please describe the general structure of the berths in that car?

A. Those berths were made so as to be used as a sleeping car or not, at will.

Q. 6. Were they situated across the car, or how?

A. They were situated parallel to the sides of the car.

474

Q. 7. On one or both sides?

A. On both sides.

Q. 8. How many of them were there?

A. My impression is there were two cars.

Q. 9. I mean how many berths high?

A. Three.

Q. 10. Please describe the lowest one?

A. The lowest one had the appearance of a bench, and was used in that way except when converted into a sleeping berth.

Q. 11. How was it as a sleeping berth?

475

A. The seat was turned down, turned to the front, which made it wide enough for one person.

Q. 12. How was the middle berth made?

A. My impression is that it was made of the back of the bench, the lower berth, turned up with supports underneath it.

Q. 13. Was the lower berth when prepared for sleeping purposes any wider than the middle berth?

A. I think not.

Q. 14. Describe the upper berth?

A. The upper berth was swung to the back of the car, and when not used as a "sleeper," was turned up to the roof of the car.

Q. 15. Was there anything to separate these berths from each other; I mean these sets of three berths?

A. I think there was.

Q. 16. What was it?

477 A. I think there was a partition of some sort; something that turned out, or was drawn out; some sort of a fixture to separate the berths.

Q. 17. Each set of berths—that is, each lower, middle and upper berth made a section, did it not?

A. Yes.

Q. 18. Now, was there anything to separate the berths of one section from the berths of another section?

A. My impression is that one of those cars was fixed with posts which could be taken away whenever they wished to change the car.

478 Q. 19. Did either car have a solid partition separating the ends of one berth from another?

A. I think not.

Q. 20. When the berths of the sections were made up to sleep in, could a person in one berth look right into the next berth?

A. I think not.

Q. 21. What prevented it?

A. A partition.

Q. 22. How high up did that partition go?

A. I don't know.

479 Q. 23. Did it reach to the roof?

A. My impression is that it reached to the roof of the berth.

Q. 24. That would be to the roof of the car, wouldn't it?

A. Yes.

Q. 25. Were there any cushions or mattresses in these berths?

A. Yes; I think there were loose cushions.

Q. 26. Did you ever lie down in the berths for the purpose of resting while travelling in this car?

480 A. I have.

Q. 27. How long were these berths that you lay in?

A. I think about six feet.

Q. 28. What is your height?

A. About five feet ten and a half; used to be; I think I have settled some

Q. 29. Were there any pillows in these berths?

A. I think so, small pillows.

Q. 30. Any circumstance that makes you remember 481
the pillows?

A. Yes; I like to sleep with my head tolerably high, and I have turned the ends of the cushions under to make the head higher. I recollect doing that.

Q. 31. What was the occasion of your riding in these cars?

A. Going North to purchase goods, twice a year, and sometimes oftener.

Q. 32. I now show you a model, defendants' exhibit, "Richmond Car," please examine the same and say 482
whether you ever saw a car, the berth-sections of which were constructed substantially like that model, if so, where?

A. The sections divided this way? referring to partitions—I was troubled about the piece which you say is the bottom of the car.

The defendants' counsel says that the model has a removable piece representing the bottom of the car, made detachable simply for packing purposes, and that the 483
model is intended to represent one section of berths on one side of the car.

Complainants' counsel objects to the instruction of this witness and the explanation of the model, as it is perfectly evident from the examination of this witness that he does not recognize anything in this model representing in the least any car ever seen or testified to by him; and 484
evidently upon a careful examination of the model itself, he does not understand the construction and operation of that model.

And complainants' counsel objects to

485

any further examination of the witness in reference to said model.

Defendants' counsel objects to the argument at this stage of the proceedings of complainants' counsel, and to his objection as a gross attempt to mislead and deceive the witness, who has during this colloquy carefully examined said model.

486 A. *Further*—The balance of the model, so far as I can recollect, is alike the car that I have seen on the Richmond, Fredericksburg & Potomac Rail Road.

Q. 33. Now look at the little piece which I hand you, marked "A," and say whether you remember any such thing in that car?

A. I remember that there was a removable partition, but whether it was exactly alike the piece marked "A" I can't say.

Cross-examination by C. K. OFFIELD, Esq.

487 X Q. 34. I understand you to have testified that no sleeping car on which you rode on the Richmond, Fredericksburg & Potomac Rail Road, between 1839 and 1850, had fixed partitions, separating and dividing the berths alike or substantially alike the partitions shown in this model, is that it?

A. My impression is that they were removable partitions.

X-Q. 35. Like those pieces marked "A" which you hold in your hand, is that it?

A. Yes, removable as to one of the cars.

488 X-Q. 36. What car have you been attempting to describe as running on the Richmond, Fredericksburg & Potomac Rail Road?

A. Sleeping car.

X-Q. 37. Have you attempted to describe more than one car.

A. I have.

X-Q. 38. Does this model represent correctly either one of those cars, or at all correctly?

489

A. Yes; I think it does very nearly.

X-Q. 39. You didn't recognize this model at all as representing anything you ever saw before, until it was pointed out and explained to you?

Objected to as assuming that counsel manipulated that model for the witness; the fact being that model was placed before the witness just as it was removed from the box.

490

Question withdrawn.

X-Q. 40. You did ride in a sleeping car, did you not, run over the Richmond, Fredericksburg & Potomac Railroad, between 1838 and 1850, which had three tiers of bunks extending along the side of the car, these bunks being supported at the outer ends by posts running from the ceiling to the floor of the car, and in which there was no partition of any kind between these bunks or berths, did you not?

A. My impression is there were removable partitions 491 between these bunks or berths.

X-Q. 41. And your best impression or recollection is, that every sleeping car you rode in on the Richmond, Fredericksburg & Potomac Railroad, between 1839 and 1850, had their bunks or berths separated or divided at night, or when made up for sleeping purposes, by removable partitions between the berths. Is that so?

A. Yes.

X-Q. 42. And upon every sleeping car that you ever saw running on the Richmond, Fredericksburg & Potomac Railroad, when those removable partitions were 492 taken away, there was still left a supporting post at each end of the berth running from the floor to the ceiling. Was there not?

A. No. My impression is that the posts and all the

partitions were taken away and put in the baggage car, until they were wanted for sleeping car.

493

X-Q. 43. And this was the construction of every sleeping car you ever saw on that road, between 1839 and 1850, so far as you recollect?

A. I have described two cars, if I am not mistaken. One constructed with the posts, and one like the model or very similar.

X-Q. 44. Well, did the car constructed with the posts have any removable partitions between the berths?

A. That's my impression.

X-Q. 45. And did the car without the posts have any partitions at all between the berths?

494

A. Yes, that's my impression—removable partitions.

X-Q. 46. And the only difference which you recollect between the two sleeping cars, or any sleeping cars which you ever knew anything about as running on the Richmond, Fredericksburg & Potomac Railroad, prior to 1850, is this, is it not, that one had removable partitions and posts separating the tiers of berths, and the other had removable partitions between the berths without any posts?

A. That's it.

495

X-Q. 47. The upper berths in every car you ever saw on the Richmond, Fredericksburg & Potomac Railroad, swung up and was fastened to the ceiling of the car, was it not?

A.—No. Only the car which I have described as being like the model.

X-Q. 48. You do recollect a sleeping car, then, on the Richmond, Fredericksburg & Potomac Railroad, prior to 1850, which had a fixed, immovable upper berth?

496

Objected to as irrelevant, incompetent and immaterial.

A. No. My impression is that all the berths were movable.

X-Q. 49. Don't you know that you never saw any sleeping car on the Richmond, Fredericksburg & Po-

tomac Railroad, prior to 1850, in which every upper berth in any such sleeping car did not hang far enough down from the ceiling of the car, so that passengers could stow away their small packages and bundles on that shelf or berth, in the opening left between that berth and the roof of the car? 497

A. I have no recollection of any such car.

X-Q. 50. Have you any recollection about it at all, as to the matter last inquired about?

A. No. I have no recollection of the upper shelf or berth that was converted for that purpose.

X-Q. 51. Did you ever ride on any sleeping car on the Richmond, Fredericksburg & Potomac Railroad prior to 1850, in the day time, or when the car was used as a day car? 498

A. Yes.

X-Q. 52. Did you ever ride on a sleeping car on the Richmond, Fredericksburg & Potomac Railroad, prior to 1850, in the night, or when the car was used as a sleeping car?

A. Yes.

X-Q. 53. That was the time you lay down in one of the berths, was it?

A. Yes.

499

X-Q. 54. Which berth was it?

A. I do not recollect.

X-Q. 55. It was that top berth, was it not, you think?

A. I do not recollect; it would certainly not be my choice.

X-Q. 56. Were there any bed clothing in any sleeping car you ever saw on that road prior to 1850?

A. My impression is there was, but I am not positive as to that.

X-Q. 57. There were curtains hung up in some of those sleeping cars in front of those berths, were there not? 500

A. I don't think there was; I don't remember.

X-Q. 58. In how many pieces were each of these re-

movable partitions in each of those sleeping cars which were taken out in the baggage room in the day time?

501 A. I do not know.

X-Q. 59. Were those removable partitions in five pieces in each of those cars?

A. I should think there were, or more.

X-Q. 60. Did you travel on any other railroads in this vicinity except the Richmond, Fredericksburg & Potomac Railroad between 1839 and 1850?

A. I think I went to Petersburg during that time.

X-Q. 61. Did you go to Petersburg and Weldon on that road during that time?

502 A. No; I went to Petersburg.

X-Q. 61. The only times that you ever saw any sleeping car on the Richmond, Fredericksburg & Potomac Railroad was when you went twice a year to the North to buy goods; is that it?

A. No; I have seen them standing on the track on Broad street often during that time.

X-Q. 62. That is, you saw the outside of them?

A. Yes.

X-Q. 63. But the only time you ever saw the inside of any sleeping car on that road prior to 1850 was in one of your *semi-annual* trips North; is that it?

503 A. I do not remember seeing them at any other time.

X-Q. 64. Did you travel on the Richmond, Fredericksburg & Potomac Railroad in a sleeping car at any time prior to 1843, or ever see a sleeping car on that road prior to that date?

A. I do not remember having travelled on a sleeping car, or having seen one, prior to that time.

X-Q. 65. What was the earliest date that you ever saw a sleeping car of any kind on the Richmond, Fredericksburg & Potomac Railroad?

504 A. I do not remember the exact time.

X-Q. 66. Will you swear that you ever travelled on a sleeping car on that road prior to the year 1850?

A. Yes.

X-Q. 67. How many times did you ride on those

sleeping cars you have described on the Richmond, Fredericksburg & Potomac Railroad between the years 1850 and 1857? 505

A. I do not know.

X-Q. 68. Did you ride on them once or twice a year during that time?

A. I expect I did; I presume I did.

X-Q. 69. Isn't your recollection just as distinct as to riding on those cars since 1850 as it was before 1850?

A. Yes.

X-Q. 70. When and where was the next sleeping car you ever saw after the ones you have tried to give your impressions about? 506

A. I think in '63. I think I saw sleeping cars in Baltimore, and all along the road from there to New York.

X-Q. 71. You rode in those cars, did you?

A. I did not. I can safely say I have never seen the inside of a sleeping car since, unless you call chair-cars and Pullman cars sleeping cars. You call chair-cars Pullman cars, don't you? I meant since I saw those cars on the Baltimore, Philadelphia & New York Road, except the Chair-Pullman car.

507

RE-DIRECT EXAMINATION.

R-D-Q. 72. Are you not sure that you rode in those sleeping cars on the Richmond, Fredericksburg & Potomac Railroad, and which you have testified about, within five years after you commenced business for yourself in Richmond?

A. I am not positive about the time I commenced riding in those cars.

R-D-Q. 73. You commenced business for yourself in 1839. Did you not ride in those sleeping cars within five years after that time or before 1846? 508

A. I think I did, but I am not positive.

R-D-Q. 73½. Did you not go to New York several times during that period?

A. Yes.

R-D-Q. 74. Is it not your belief that you rode in those sleeping cars during those trips to New York ?

509

A. Yes, I think I did.

R-D-Q. 75. When you said Pullman in your answer to cross-question 71, did you mean sleeping cars, or Pullman parlor chair cars ?

A. Pullman chair cars.

R-D-Q. 76. You have said that partitions were in five pieces or more, did you mean that each single partition was composed of five or more pieces, or what did you mean ?

A. The question was asked me if it was in five pieces. I said yes, or more. It was my impression it was. That's what I meant, that each partition was composed of five pieces or more, each section.

510

RE-CROSS EXAMINATION BY MR. OFFIELD.

R-X-Q. 77. Into how many pieces do you wish to now swear that those removable partitions between the berths, which you have sworn were taken down and removed to the baggage room, were in ?

A. My answer to that question was in reference to the post car ; not this car—referring to model, Exhibit—.

511

This car, you can see, the partitions are fixed, most of them.

The last question of counsel and answer objected to by complainants' counsel, as an evident and flagrant attempt to change the evidence of this witness upon the point inquired of, and as being in no wise a correction or explanation of any testimony given.

512

R-X-Q. 78. You recollect distinctly, don't you, this nice little board hanging down from the roof of the car, so as to make a nice close joint, against which this upper berth could rest, in those old cars, as shown by the model ?

A. I don't remember the nice board.

R-X-Q. 79. You recollect those brass hinges on the carlines or rafters of the car, close to this board, as shown in the model, don't you? 513

A. I do not.

R-X-Q. 80. You have an impression that they were there, haven't you?

A. No, sir. My impression is they were not there.

R-X-Q. 81. About everything you have said in this deposition has been principally your impressions, and not positive and distinct recollections, is that it?

A. Yes.

RE-RE-DIRECT.

514

R-r-Q. 82. You have testified according to your best memory and recollection, in giving this deposition, have you not?

A. I have.

R-r-Q. 83. Do you wish to be understood by your answer to r-x-q. 77, in referring to the model having fixed partitions, and drawing a distinction between it and the post-car, that the other car on that road you have testified about, had fixed partitions like this model? 515

A. No, I do not.

R-r-Q. 84. Do you mean, then, that one of those cars used on the Richmond, Fredericksburg & Potomac Railroad, as testified to by you, had partitions placed at the ends of the berths, as in this model, Exhibit "Richmond Car," but which you think were removable?

Objected to as a continued attempt to induce the witness to change his former testimony into a desired answer, concerning a matter which he has repeatedly testified to in detail. 516

A. Yes, I think so.

And further this deponent saith not.

517

CHARLES HARTWELL.

Adjourned until further notice of counsel.

I, Jo. Lane Stern, a Notary Public for the City of Richmond, State of Virginia, do hereby certify that the foregoing depositions were duly taken, sworn to and subscribed in my presence between May 10th and 13th, 1881, inclusive. Counsel for both sides appearing and consenting.

518

Given under my hand this 14th day of May, 1881.

JO. LANE STERN, Notary Public,
for the City of Richmond,
State of Virginia,

519

520

IN THE CIRCUIT COURT OF THE UNITED
STATES.

FOR THE NORTHERN DISTRICT OF ILLINOIS.

GEORGE M. PULLMAN AND PULL-
MAN'S PALACE CAR COMPANY,

versus

THE NEW YORK CENTRAL SLEEPING
CAR CO., AND WEBSTER WAGNER.

In Equity.

522

FURTHER testimony taken in behalf of the defendants under the 67th rule in equity as amended, at the city of Richmond, Virginia, before Jo. Lane Stern, a Notary Public in and for said city, and duly appointed by this Court a Special Examiner in the said cause, the complainants being represented by C. K. Offield, Esq., and the defendants being represented by H. T. Munson, Esq. 523

RICHMOND, VA., June 6, 1881—1 P. M.

HENRY DEAN, a witness produced on behalf of the defendants, being duly sworn, deposes and says as follows :

Q. 1. What is your name, age, residence and occupation ?

A. Henry Dean. I am 65 years old. I live in Richmond, Virginia. I am a railroad coach painter and trimmer. 524

Q. 2. Were you ever employed by the Richmond, Fredericksburg & Potomac Railroad Company, and if so, when first ?

A. Yes ; I have been working there thirty odd years.

525 Q. 3. When were you first employed by that company?

A. In 1843.

Q. 4. Have you worked for that company ever since?

A. Yes, sir.

Q. 5. As a coach painter and trimmer?

A. Yes, sir.

Q. 6. When you were first employed by this railroad, had it any sleeping cars on it?

A. Yes, sir.

Q. 7. How many?

526 A. They had one. They had another one, but it was not the same pattern. It was made different inside.

Q. 8. Describe the first one you refer to as well as you can?

A. The first car was made with three berths, one after the other. They were placed all along the whole length of the car ; all those berths were. There was a partition between each berth ; it ran out about two feet wide ; it ran up to the ceiling.

Q. 9. What do you mean by three berths, one after the other?

527 A. One was about eighteen inches high from the floor, the other one was about four feet, and the top one was about eighteen to twenty inches from the ceiling.

Q. 10. Were they parallel with each other?

A. Yes, sir.

Q. 11. That would make three berths high on each side of the car. What do you mean by "there was a partition between each berth"?

A. There was a partition between each berth lengthways ; the other berths that went up were all berths, clear through to the window.

528 Q. 12. We will call each set of three berths, one above the other, a section. Where were the partitions with respect to the sections?

A. At the head of the berth.

Q. 13. You say they ran up to the ceiling. How far did they extend down ; I mean the partition?

A. They went down to the floor of the car.

Q. 14. What kind of partitions were they?

529

A. They were made in panel, like a plain door.

Q. 15. Were they stationary or loose?

A. They were stationary.

Q. 16. Were these sections of berths on one or both sides of the car?

A. On both sides.

Q. 17. Was there any aisle or passageway between them?

A. Yes, sir.

Q. 18. How was the lower berth made?

A. It was trimmed pretty near as you would trim a plain sofa on top. 530

Q. 19. How was the middle berth constructed?

A. That was constructed from the back of the lower seat raised up; then a couple of spring-bolts went into the panel doors. The doors were used as partitions to divide one berth from another.

Q. 20. When this middle berth was raised up, what held its back edge?

A. Hinges. They were screwed to the pillars of the car, between the windows.

Q. 21. How was the upper berth constructed?

531

A. That had hinges to the back part of that, and that was hooked up to the ceiling of the car by two hooks one at each end, and when they let it down it rested on two bolts, as far as they wanted it to go, at the stopping place.

Q. 22. What was the back edge hinged to—the roof of the car, the side of the car, or the partition?

A. The side of the car, on the same pillar that the other one was. The pillar went all the way to the top.

Q. 23. Then it was the front edge of this berth that went up to the ceiling of the car, was it?

532

A. Yes.

Q. 24. Did this upper berth, when swung up in this way, shut up tight?

A. Yes, sir.

Q. 25. Was there any cushion in this upper berth?

- A. They didn't call it a cushion. They called it a mattress, you know.
- 533 Q. 26. Did it have a mattress?
- A. Yes.
- Q. 27. Could it be removed; that is, was it fast or loose in the berth?
- A. It was loose.
- Q. 28. What kept it from being jostled out?
- A. A moulding put on the front edge projected above where the mattress went in, an inch and a half to two inches, I suppose.
- Q. 29. Any pillows in that berth?
- 534 A. Yes, sir. They were made round. I suppose they were from six to eight inches across the end.
- (No 30th question, J. L. S., N. P.)
- Q. 31. What was this upper berth swung upwards to the roof of the car for?
- A. To keep it out of the way of a man's head when he went to sit down on the seat.
- Q. 32. What was it lowered down to rest on its bolts for?
- A. So a man could get inside of it.
- Q. 33. What would a man want to get inside for?
- 535 A. To sleep.
- Q. 34. If the mattress went into the upper berth and the berth had an upward projecting ledge, as you say, that made a shallow receptacle or holder for the mattress, did it not?
- A. Yes, sir.
- Q. 35. Was this upper berth wide enough for one or two persons to sleep on?
- A. Two lean fellows could crowd in, but if a big fat fellow were to get in it wouldn't leave any room for the other one.
- 536 Q. 36. Was the lower berth a single or a double one?
- A. Double one.
- Q. 37. How was it made a double berth?
- A. They pulled the seat out; then they had a framed

one with slats in the bottom of it, then a mattress went in that, that made it a double one.

Q. 38. That would make the front half of the lower berth stick out into the aisle of the car, would it not? 537

A. No; it would not. It came even with the berth partitions, as near as I can tell. It has been so long ago.

Q. 39. What was underneath the lower berth or seats?

A. One-half of the lower berth made the seat when the berth was put up.

Q. 40. Was there anything at the ends of the lower berth when arranged as a double berth, to keep the occupant of one berth from interfering with his neighbor in the next berth? 538

Objected to as an evident attempt to induce the witness to give a desired answer, and to give another and different description of the lower berth from that he has given in his testimony.

A. That panel work went from the floor up to the ceiling. 539

Q. 41. Was there any ladies' apartment in this car?

A. At one end.

Q. 42. How was it separated from the main body of the car?

A. By a curtain.

Q. 43. Was there any sign of any sort indicating that it was the ladies' apartment?

A. No, there was on the curtain: "For ladies only," painted on the curtain.

Q. 44. Did you ever lie down in this car in any of its berths? 540

A. No, sir.

Q. 45. Did you ever trim the car?

A. Yes, sir.

Q. 46. Was this car in use upon the road when you first went into its employ?

A. Yes, sir.

541 Q. 47. Now please describe the other car, which you say was of a different pattern?

A. That was just made with seats each side. A man could sit up or loll, just as he pleased. They were not movable. If they were, I don't recollect it. They might have been.

Q. 48. Were they longitudinal, or did they run across the car?

A. They run lengthways the car.

Q. 49. Against its sides, on in the middle?

A. Along the side. One on both sides of the car.

542 Q. 50. Were there any partitions in this car between the berths?

Objected to as assuming there were any berths in the car last referred to, except one long one on each side, which the passenger could lounge on, as testified to by the witness.

A. No, there were no partitions, not that I can recollect. I don't say positively there were none. There might have been, I don't recollect them.

543 Q. 51. Was there any place provided to hold passengers' baggage, hand-bags and the like?

A. They took them in the car with them, and set them alongside the seat, or took them on the seat with them.

Q. 52. Was this second car called a sleeping car by the people about the railroad?

A. No; I don't think it was.

Q. 53. Did it look anything like the first car, on the outside?

A. Yes, it had the same appearance.

544 Q. 54. Do you remember the shape of the windows in these cars?

A. Yes; they were gothic.

Q. 55. What makes you remember them?

A. I used to put glass in them.

Q. 56. Please look at the model "Exhibit Richmond

Car," which I now show to you, and say whether you ever saw a sleeping car, the sections of which were constructed like it? 545

The introduction of this model objected to as incompetent under the deposition of this witness, and as being a flagrant attempt to induce the witness to change his testimony as now given; and as an attempt to extract a desired answer from the witness, and to induce him to change his recollection of the first car he attempted to describe, so as to make it correspond with the model presented to him. 546

A. There ought to be a piece here.

Defendants' counsel asks the Notary to state that the witness placed his hand at the end of the extended front part of the lower berth, which the witness turned outward into what represents the aisle of the car, in the model, in obedience to the request to examine the same, that before doing so he raised the back of the seat or lower berth to a horizontal plane, and afterwards lowered the upper berth from its closed position to its horizontal one, took the cushion therefrom, laid it upon the extended part of the lower front berth, replaced said cushion, closed the upper berth, and then made the answer. 547

Complainants' counsel asks the Notary to state upon the record that this witness, when first presented with this model, seemed entirely unfamiliar with its mechanism; that he was not able to arrange or open or unfold the lower and middle berths of the model, and put them in 548

549

place as for sleeping purposes ; and to state further that the witness did not make the side remark which defendants' counsel desired to be put on the record, and which the Notary, I see, has seen fit to designate as an answer, in the words : " There ought to be a piece here," until after the witness had examined the two eyes at the ends of the lower berth, the two end pieces marked " A," being in plain view of him.

550

The Notary states that he did not take notice of the witness during the manipulation of the model, as it sat to his left side, and was being handled by the witness while the Notary was writing the question, and that before he had finished writing the question, he heard the witness say : " There ought to be a piece here," and glancing up he saw the right hand of the witness at the end of the lower berth as opened.

551

While the Notary was writing this statement, counsel for complainants said to counsel for defendants, you have no right to require the Notary to say anything about the model, or words to that effect. The witness then said : I didn't care to see the model. Complainants' counsel said I guess not, you have seen a dozen like it lately, and the witness replied, I never saw a model like that in my life ; and this the notary states at request of counsel for complainants as being as nearly the language used by the different parties as he could catch, being engaged in writing other matter at the same time.

552

Counsel for defendants' now asks the

witness to repeat exactly the words he used. 553

A. I did say I never saw a model like that before.

Q. 57. Before you said "there ought to be a piece here," had you seen the little eyes referred to by complainants' counsel in the model?

A. No, sir.

Defendants' counsel objects to the allegations last heretofore made as objections by complainants' counsel, as a flagrant and gross attempt to intimidate this witness, and prejudice his testimony, 554 especially so, because of the statement therein, intimating that "the two end pieces marked 'A' being in plain view of him;" the fact being that said end pieces marked "A" are still in the closed upper berth of the model, which pieces have not been removed by any one, thus far, during this examination.

Complainants' counsel requests the Notary to state, in view of the inference 555 which might be drawn from the last statement of defendants' counsel, that the end pieces were in full view of the witness, lying in the upper berth, when that berth was being examined by the witness, and while it is impossible to state, perhaps, that the witness when examining the model saw the end pieces, the eyes or the berths of the model themselves, still all these parts were in full view.

556

Defendants' counsel, to close the colloquy, lowers the upper berth, and asks the witness to state whether or not at the time when the cushion was removed from the upper berth and placed upon the

557 lower one, when he made his answer to question 56, he saw the little boards now lying in the upper berth.

A. I saw them after I made the answer.

Q. 58. Please now answer question 56, which is read to you?

A. That is like the old sleeping car a great deal.

Q. 59. You mean like the one you have been testifying about, on the Richmond, Fredericksburg & Potomac Railroad, do you?

A. Yes, sir.

558 Q. 60. I now place the little boards marked "A," at the ends of the lower berth, and ask you to say whether you recollect any such removable boards so used in the first car you have described, as being used on the Richmond, Fredericksburg & Potomac Railroad?

A. Yes, they had boards there, when they pulled the berth out. They placed them there after they opened the berth.

5 P. M.

559 The further taking of these depositions is continued until to-morrow, at 10:30 A. M.

JO. LANE STERN, Notary Public,
Special Examiner.

TUESDAY, June 7, 1881. 10:30 A. M.

Met pursuant to adjournment.

Cross-examination of the witness, HENRY DEANE.

X-Q. 61. When did you first come to Richmond?

A. In 1833.

560 X-Q. 62. When did you do any work on the railroad cars of the Richmond, Fredericksburg & Potomac Railroad?

A. In 1843.

X-Q. 63. What time in the year 1843?

A. I can't say the month, June or July. It was pleasant weather. It might have been earlier.

X-Q. 64. What was the first work you did, as you say, in 1843, on any railroad car on that road? 561

A. I went to work on two cars that had been begun. I painted them.

X-Q. 65. The first you knew about any sleeping car then on the Richmond, Fredericksburg & Potomac Railroad was when you went to work for that road in 1843, is that it?

A. Yes, sir.

X-Q. 66. Do you mean to say that when you went to work for that road in 1843, there was any car known or used, or run on that road as a sleeping car, or ever run on that road as a sleeping car after you went there? 562

A. Yes, sir.

X-Q. 67. That car ran in the night time, did it, as a sleeping car, at the time you went there in 1843?

A. Yes, sir.

X-Q. 68. And it ran as a night sleeping car on the night trains of that road until it was broken up, did it?

A. Broken up how, when?

X-Q. 69. Well, it ran on the night trains of that road as a sleeping car so long as you knew anything about it, didn't it, after 1843? 563

A. Yes, sir.

X-Q. 70. The car that you are speaking of now is the car with the fixed partitions and movable upper berths, is it not?

A. Yes, sir.

X-Q. 71. What became of this car with fixed partitions and movable upper berths, as you say?

A. Why, when it got old they broke it up.

X-Q. 72. How long did that car run after you first saw it in 1843? 564

A. I reckon it was on the road, as near as I can recollect, ten years, may be more.

X-Q. 73. Did you ever sleep in that car or ride in it?

A. I don't recollect whether I ever did or not.

X-Q. 74. You had forgotten all about that car, had

you not, until your recollection was refreshed or the matter recalled to you within a year or two?

565 A. No. I recollect all about it. I recollect it all the time. I have thought about it when I have been in bed.

X-Q. 75. How long was that car?

A. I could'nt tell you exactly. It was over forty feet.

X-Q. 76. How high was it between the floor and ceiling on the wall side?

A. Over six feet high.

X-Q. 77. Did it have any raised roof or deck?

A. What do you mean—a raised roof?

566 X-Q. 78. I mean did it have a portion of its roof in the center higher than the other part, with windows so you could look out, as they have them in the ordinary car now?

A. No; the roof covered the whole top of the car.

X-Q. 79. Were there any water closets in that car; if so, where?

A. Yes; there was a water-closet in one end.

X-Q. 80. In the ladies' or gentlemen's apartment?

A. Ladies' apartment.

567 X-Q. 81. Were there any stoves in that car; if so, where?

A. One stove in the centre of the car.

X-Q. 82. In the centre of the aisle of the car?

A. Yes, sir.

X-Q. 83. How far did that car run as a sleeping car each night after you went there in 1843, and how many hours did it take to make that run?

A. It run to Fredericksburg. I think it was three hours and a half, as well as I can recollect.

568 X-Q. 84. Did you ever see those upper berths in any other position except in the down position for night use?

A. I have seen them hooked up to the ceiling.

X-Q. 85. Don't you know that none of those upper berths ever at any time came as near as twenty inches to the ceiling or carlines of that car, and don't you know that those upper berths were used principally as

shelves for stowing away the baggage of the passengers, and that no person slept in them?

A. I don't know anything about that part, for I never travelled on it. 569

X-Q. 86. The next sleeping car that run on that road that you know anything about was the Woodruff car with fixed partitions, was it not?

A. I never have seen it, or, if I have, I don't recollect it.

X-Q. 87. Then the only sleeping car that ever ran on the Richmond, Fredericksburg & Potomac Road, that you can give any description of, is the one you saw in 1843, and first described by you in this deposition; is that so? 570

A. In those days.

X-Q. 88. Are you familiar with, and can you give the arrangement and construction of, the Pullman sleeping car as to its berths?

A. Well, I have been in one of them. I can't say how the machinery works the seats, I didn't notice particularly.

X-Q. 89. The Pullman sleeping cars have been running on the Richmond, Fredericksburg & Potomac Road for a number of years, have they not? 571

A. Yes; they have been running on the road, but I couldn't tell you how long.

X-Q. 90. Has there ever been a time during the last thirty-one years that the Richmond, Fredericksburg & Potomac Railroad did not have a sleeping car of some kind, with sleeping berths in it, running upon that road?

A. They had none in war times.

X-Q. 91. But outside of the war times that road has always had sleeping cars with sleeping berths running upon it, has it not? 572

A. I couldn't tell you if they had them as a regular thing from that time through.

X-Q. 92. Will you swear positively that there were partitions between every set of berths in that sleeping car that you first saw in 1843?

A. No, sir ; I would not swear positively.

573 X-Q. 93. Don't you know, as a matter of fact, that the only board partitions that were in that car that you have first attempted to describe were board partitions running from the floor to the ceiling and separating the car into two apartments?

A. What two apartments?

X-Q. 94. Ladies' and gentlemen's apartments?

A. Well, now, as well as I can recollect, there was a green curtain between the two apartments, for I wrote the letters on there myself: "For Ladies Only."

574 X-Q. 95. Will you swear positively that there was a single board partition extending from the floor to the ceiling to separate any of the berths of that car?

A. I don't recollect of any board partitions at all.

X-Q. 96. Your recollection of the kind of partitions that separated the berths of that car, as described by you as first seen in 1843, is more of an impression than a distinct and positive recollection, is it not?

575 A. I couldn't tell you whether it was parted with a curtain or a framed one. Well, you have seen window shutters made plain, haven't you. I don't mean a bat-tern window shutter; I mean a plain one,—a framed partition with panels in it, three. That's all about that.

X-Q. 97. Your recollection isn't very distinct, then, about the kind of or material which formed the separation or partition between the berths of that car, although your best impression is that there was some kind of a partition or separation between those berths or sections, isn't that it?

A. Yes, sir.

X-Q. 98. Do you work steadily at your trade now?

A. Yes, sir.

576 X-Q. 99. If you have ever seen, since 1843, another sleeping car, running on the Richmond, Fredericksburg & Potomac Railroad, with fixed partitions running from the floor to the ceiling between the berths, and with the seats of the car being pulled out to form a lower berth, and with the upper berth folding up towards the wall or

ceiling of the car out of the way; if you have ever seen such a sleeping car on the Richmond, Fredericksburg & Potomac Railroad, you may have got the internal construction of that car, as to its berths and partitions, mixed up with the internal construction of the sleeping car you saw on the Richmond, Fredericksburg & Potomac Railroad in 1843, first described by you, may you not ? 577

A. That's the one I know the construction of, and I have never seen any other one like it.

X-Q. 100. You haven't any recollection then at all of the Woodruff car?

A. No, sir.

X-Q. 101. How far down from the ceiling did these hooks hang, which you say hooked up the upper berth? 578

A. From three to four inches.

X-Q. 102. Were these hooks fastened onto the lower side of the carlines of the car?

A. They were fastened up to the top of the roof of the car.

X-Q. 103. When the upper berth was hooked up as you say in that position, there was room enough in that four inches of space between the berth and the roof of that car, for the passengers to stow away their canes and umbrellas through that opening in the upper berth, wasn't there? 579

A. No, sir.

X-Q. 104. Why not?

A. Because there was a moulding went around the outside of that to hold the mattress in there.

X-Q. 105. The moulding went around the outside of what?

A. The berth.

X-Q. 106. How far did the carlines of that car extend into that car? 580

A. How wide was it through? About two inches maybe two and a quarter, maybe one and three quarter.

X-Q. 107. What was there to prevent any passenger

from putting his cane, when the upper berth was hooked up, through the opening into this berth?

581 A. There wasn't any opening to go into it, as I can recollect of.

X-Q. 108. The upper berth went up against the carlines of the car didn't it?

A. Yes. If I am not mistaken about that it had a head lining, a curtain, that covered all the bottom of the ceiling.

X-Q. 109. Fastened to the under side of the carlines?

A. Yes. Nailed up there with brass-headed tacks.

582 X-Q. 110. And this curtain dropped down from the ceiling a little, did it not, from the front side of the berth, so as to hide it, when it was hooked up to the carlines?

A. No, it didn't drop down any. It laid on there smooth.

X-Q. 111. Did this head-lining for the ceiling extend over the entire car or just over the upper berths?

A. It went all through the car to make a finish for the car, the ceiling.

583 X-Q. 112. Was there any board dropping or extending down from the ceiling at any place in that car that you recollect?

A. No, only the berths that were hung up, the hooks. They were all.

X-Q. 113. Were there any boards extending down from the ceiling of that car, near or in connection with those upper berths?

A. Board, how? Dropping down. I don't understand you.

584 X-Q. 114. Were there any boards fastened to the ceiling and extending down into the car any distance in front of the upper berth when it was hooked up?

A. There was a curtain dropped down in front of the berth, there were no boards.

X-Q. 115. How far did the curtain drop down in front of the berth when it was hooked up to the ceiling or carlines of the car?

A. Down to hide the lower berth.

X-Q. 116. The passengers who slept in that car simply lay and slept with their clothes on, didn't they, there were no bed clothes, were there? 585

A. I don't know whether they did or not, I wasn't there.

X-Q. 117. The other car which you have attempted to describe in answer to question 47 of your direct examination, was simply a car with a cushioned seat or sofa running along each side of it, on which passengers could lie down and sleep, wasn't it?

A. It had seats all along the whole length of it under the windows, on which passengers could lie down or loll. It wasn't made for a sleeping car, not as I know of. 586

X-Q. 118. It had no upper berths or anything of that kind, or any place where a man could lie down and sleep above these seats, did it?

A. No, sir.

X-Q. 119. You are the same Henry Deane who signed and swore to an affidavit in October, 1880, in a suit by these complainants *versus* the Baltimore & Ohio Railroad Company of Baltimore, Maryland, are you not, about the old sleeping car? 587

A. Yes, I believe I am. Same man.

X-Q. 120. You never made but this one affidavit about this old sleeping car, did you?

A. That's the only affidavit I ever made about it, except my present deposition.

X-Q. 121. You swore in this affidavit, made last year, that you were 66 years old, you now swear you are 65, which of these statements is correct?

Objected to as assuming a fact not proven, and as incompetent, irrelevant and immaterial. 588

A. I just made a mistake of one year, I am 65 years old. This November I will be 66.

X-Q. 122. You swore in that affidavit that in the

year 1841 you assisted in repairing and trimming a sleeping car on the Richmond, Fredericksburg & Potomac Railroad, you now swear that you never saw a sleeping car on that road until 1843, have you any explanation to make as to those two different statements?

Same objection.

590 Complainants' Counsel here states as is well known that the affidavits of witnesses referred to in these interrogatories was read in evidence by the defendants' counsel here present in the suit last referred to and was placed by him on the files of the Court therein, and is now part of the record therein.

591 And Complainants' counsel calls upon defendants' counsel to withdraw the first part of his objection relating to facts not proven, or consent, or authorize the withdrawal of the original affidavit itself to be used in connection with this examination if he is not satisfied for the purposes of this examination with the printed copy of the affidavits made by himself, and read to the Court at the hearing of the last mentioned cause instead of the original, the same being handed to complainants' counsel in this case.

592 Defendants' counsel replies that although complainants' counsel has refused to permit the counsel for defendants' in said Baltimore suit and the present suit to withdraw models filed in the Baltimore suit for use in the present suit, consent is hereby given for the withdrawal of the "Deane affidavit" referred to for use herein. He further states that in consequence of the haste in which the record

was printed in the Baltimore suit, counsel is unwilling to admit that the printed copy is a correct copy, but agrees that if the portions or statements quoted from said affidavit are found to be correct upon comparison with the original, no advantage shall be taken of that portion of the objection alluded to. 593

A. I never meant to say I never saw it until 1843. I said I never worked on it until that year. I may have made a mistake as to the date, all men are liable to make mistakes as to dates. I saw this car before 1843. I know when it was built, but I can't give the date. 594

X-Q. 123. You swear in your affidavit last referred to as follows: "That there was provided a moveable piece stored in the box beneath the lower berth during the daytime which piece was placed in position for night use so as to complete the position between adjoining lower berths and extend the same from the aisle to the wall of the car by means of hooks which entered eyes in the edge of the vertical partition, and pins that entered sockets near the end of the aisle platform of the berth, which movable pieces thus placed in position for night use served as the head-board of one berth and the foot board of the next adjacent berth," you have sworn in this deposition that the front half of the lower berth did not stick out into the aisle of the car when the berth was made up, but that it came even with the berth partition as near as you can recollect, it having been so long ago; which of these statements is correct? 595

Same objection repeated. 596

A. They threw the seat over (the bottom seat). Well then there was another piece attached to that, then there were legs to that, they dropped down on the floor; hinge like, that dropped down just so. Well then the

head board, the partition, was put in a slot that made a head board for the outside berth, the double one.

597 X-Q. 124. Is that all the explanation you have got to make as to those two different statements?

A. That's as near as I can recollect.

1.45 P. M., Recess to 2:30 P. M.

Met at 2:50 P. M.

598 X-Q. 125. You swore in that affidavit that, "the platform of this upper berth, when the car was arranged for day use, was swung or turned upwards towards the roof of the car, its inner or aisle edge moving past the ledge of a longitudinal ledge projecting from the roof of the car, and to which it was secured by means of a spring catch in the centre and by a hook and eyes at each end." You have testified in this deposition that there was no board or projection from the ceiling in connection with the upper berth, but that there was a curtain which dropped down from the ceiling in front of this berth when it was hooked up to the ceiling of the car, which of those two statements is correct, if either of them?

599

Same objection as before.

A. What dropped down, a cushion or a curtain or a board? There was a curtain dropped down.

X-Q. 126. But there was no longitudinal ledge projecting from the roof of the car above any of these upper berths, were there?

A. No, there wasn't any ledge; I said there wasn't any legs; didn't you say legs?

600 X-Q. 127. Question repeated.

A. No, nothing of that kind that I can recollect; it was a plain car; it was a plain car inside and the berth was put into it.

X-Q. 128. You swore in that affidavit as follows: "I have examined a model representing one section of a

sleeping car, to which model a tag is affixed upon which is inscribed 'Richmond Car,' to which tag I have signed my name ; that I find the construction and operation of one section of the sleeping car which I have described, and which was run for profit between the cities of Richmond and Fredericksburg and Potomac Rail Road during the years 1841 to 1849, inclusive." You have sworn in this deposition referring to model "Richmond Car" introduced in the evidence, that you never saw a model like that in your life, and that you never saw a model like that before ; which of those statements, if either of them, is true ? 601

Same objection.

602

A. I didn't swear to that model at all (pointing to the exhibit "Richmond Car" in the box), for yesterday was the first time I ever saw it.

X-Q. 129. And you haven't intended to swear, have you, that the model in the box, defendants exhibit "Richmond Car," represents at all correctly any portion of the old sleeping car first attempted to be described by you in this deposition ?

A. That one there is something like it, of course ; it has got three berths one after the other. 603

X-Q. 130. Then with the exception that this model has three berths one after the other it does not represent the old sleeping car you have attempted to describe, is that it ?

A. I did not say any such thing ; it does represent it ; there are three berths in the model, and three berths in the car, one after the other.

X-Q. 131. But isn't that the extent this model represents the old sleeping car you have attempted to describe, namely, that there were three berths, one after the other ? 604

A. Well, I suppose it does represent the car, the sleeping car, it represents that.

X-Q. 132. Do you mean that it represents it to any greater extent than that the old sleeping car had three

berths one after another, and that this model has three
 605 berths one after another?

A. Well, they are both alike, ain't they.

X-Q. 133. Both alike how?

A. In the arrangement of them.

X-Q. 134. Well, what arrangement are you swearing
 to now?

A. I am not swearing to any, unless I know what
 it is.

X-Q. 135. Then you don't know what you have been
 swearing to the last three or four questions and answers,
 do you?

606 A. Yes, I know.

X-Q. 136. Do you know Mr. Hugh Longest, formerly
 of this city?

A. Yes.

X-Q. 137. Did you have a conversation the latter
 part of October last with him about the construction of
 this old sleeping car you first attempted to describe, at
 this city?

A. No, I had no conversation with him about it at all
 he had a conversation with me.

607 X-Q. 138. You stated to him in that conversation,
 did you not, how that old sleeping car you have
 attempted first to describe in this deposition was con-
 structed?

A. No, I did not.

X-Q. 139. You didn't tell him anything about how it
 was constructed, did you?

A. Not that I recollect.

X-Q. 140. Will you swear you did not?

A. To the best of my knowledge I will.

608 X-Q. 141. Let me refresh your recollection; during
 the latter part of October last in this city did you not
 make substantially the following statement as to the
 construction of that old sleeping car to Mr. Longest:
 Said car upon its outside was an ordinary passenger or
 day car; upon its inside it had seats arranged along
 each side from end to end, with a passageway between;
 about every six feet along the aisle side of those seats

there were small upright posts extending from the floor to the ceiling ; the lower bunk was the seat ; the middle bunk was formed by raising up the back of this seat and fastening its front or aisle corners to said posts, it being hinged to the side of the car ; the upper or top bunk was loose and swung up towards the top of the car, and hooked up to the carlines of the car, and that there were no partitions of any kind in said car between said berths except a stationary partition across the car near one end to form a ladies' apartment. 609

Objected to as incompetent, irrelevant and immaterial. 610

A. No, sir, I never said anything about it ; not to him. He wanted me to go down to the Exchange Hotel and give a deposition, and I told him I wouldn't go, and I asked him what he had to do with it. He said that Mr. Sharpe was a great friend of the Pullman Sleeping Car Company, and sent Longest down here to find out what he could about it. I told him I had given in one deposition and I wasn't going to give in any more. He said come and go down to the Exchange Hotel, and I said if you give me a hundred dollars I will go down with you ; I will stay a week with you. I didn't tell him though what I had said in my deposition. I thought I would give him the same deposition I had given before, but I didn't tell him so. Three men came after me and wanted me to give in my deposition. I told them I wouldn't do it. One was a lawyer; he said I am going away to-night, and I said well, you can go now, I wouldn't give it. 611

X-Q. 142. You stated to Mr. Longest in that conversation that you knew of your own knowledge that there was an old sleeping car on the Richmond, Fredericksburg and Potomac Railroad, when you went there in 1843, did you not? 612

A. I don't recollect saying it to him ; I don't think I did.

613 X-Q. 143. How many times did you see Mr. Longest about that sleeping car last October?

Objected to as an attempt to mislead the Court into the belief that this witness sought Mr. Longest, when the contrary appears to be the case.

A. I didn't see him but that one time; that was about a half hour. I wasn't talking to him all that time, either. He was going about in the yard; I was at work.

614 X-Q. 144. A man by the name of Worden got you to give the affidavit that you did, didn't he?

A. Yes, sir.

X-Q. 145. You are in his service now, are you not?

A. No, sir.

615 X-Q. 146. Your recollection about that old sleeping car amounts to just this, doesn't it, that you recollect that there was a sleeping car on the Richmond, Fredericksburg and Potomac Railroad when you went there in 1843, and after thinking it over yourself and talking it over with Worden, your strongest impression is that its internal construction was about like you have described; isn't that about it?

A. I didn't talk to Worden about the car at all. I have been in the car, and I have seen the construction of it myself.

X-Q. 147. And your best impression is, after this lapse of time, that its internal construction was about what you have described; is that it?

A. I think it was done about as I have described; the construction of it inside.

616 X-Q. 148. But you haven't intended to swear positively as to the internal construction of that old sleeping car?

A. I could swear this way, there were three berths, one after another, and it was put on the road for that purpose.

X-Q. 149. But the detailed construction and arrange-

ment of those berths, and the manner of their construction and separation, you will not swear positively about; is that it? 617

A. I will swear there were three berths, one after the other.

X-Q. 150. And that's as far as you will swear positively about, is it?

A. I will swear to this, that there was a sleeping car on the road, and that it had berths in it, and that it went to Fredericksburg and took passengers in it.

X-Q. 151. Now, will you swear positively, that you have any distinct recollection as to how those three berths were constructed, and how they were separated, one set of three berths from the other? 618

A. No, I wouldn't swear positively as to how they were constructed, but I know there were three berths, one on top of the other.

X-Q. 152. Who have you talked with about this old sleeping car, lately?

A. I don't know as I have talked to anybody lately about it.

X-Q. 153. Don't you know now that there were no partitions in that car separating the berths, except posts that ran from the floor to the ceiling of the car, at the aisle ends of the berths? 619

A. I know there were posts in the car running from the floor to the ceiling. They were turned, made of oak.

X-Q. 154. And these posts were at the outer or aisle ends of the bunks and supported those bunks, did they not?

A. They might have done it. I suppose they were put there for that purpose.

X-Q. 155. Will you swear positively that there were any other partitions or separations between the ends of the bunks in that old sleeping car on the Richmond, Fredericksburg and Potomac Railroad, when you went there in 1843, except those posts described in your last answer? 620

A. I wouldn't swear positively, but I think there was,

separating the berths. I don't know whether it was curtains or boards made in panel.

621

During this cross-examination, the model has been boxed up out of sight of the witness.

HENRY DEAN.

Adjourned till 2 P. M. to-morrow.

JO. LANE STERN,
Notary Public,
Special Ex'r.

622

June 8th, 2 P. M. Met pursuant to adjournment.

THOMAS T. CHANDLER, next witness, being uy sworn, deposes and says as follows :

Q. 1. What is your name, age, residence and occupation ?

A. Thomas T. Chandler ; age, in my 63d year ; Caroline county, Virginia ; I am a farmer.

623

Q. 2. Were you ever employed by the Richmond Fredericksburg & Potomac Railroad, and if so, when ?

A. I was employed by them some time in the year 1841, Fall of 1841, and five years succeeding.

Q. 3. What was the nature of your employment ?

A. Conductor of passenger train.

Q. 4. Where did you run from, and where to ?

A. My regular engagement was from Hanover Junction to Gordonsville.

Q. 5. That is the branch then known as the Louisa Road, was it not ?

624

A. It was.

Q. 6. What did you do after you left that railroad ?

A. I engaged in farming in Caroline county.

Q. 7 During the time you were a conductor on this railroad, did the Richmond, Fredericksburg & Potomac

Railroad have in use upon it any such thing as a sleeping car?

A. They did.

625

Q. 7. Just describe that sleeping car to us.

A. That car consisted of three tiers of berths, one above another, divided in sections of six or seven feet by a light partition from floor to joist, I may say, or the top of the car. The lowest tier furnished a double berth formed by the unfolding of what constituted a seat in the daytime, to the avenue of the car, supported there by two wooden appendages or legs, which were attached to the upper portion of the seat. The rear portion of this tier being furnished by what constituted the double formation of seat, to which was attached the unfolding projection by hinges. This outer portion of the tier had a wooden board of separation, forming a head or foot-board when used for sleeping purposes. The second tier, which constituted a single berth, was formed by elevating to a horizontal position what constituted the back of the seat, which was attached to the side of the car by hinges, which in reaching its horizontal position slid into a support on the top of a spring, which was shoved back in elevating it. The third tier, whilst the car was used as a day car, being attached to the side of the car by hinges, and elevated at an angle of forty-five degrees, or thereabouts, was hooked to a narrow board, or strip, at the top of the car, forming a receptacle in the rear for cushions or berth furniture, and when put in position for a berth was lowered to a horizontal position and rested on small square pieces of timber attached to the framing of the partition. Underneath the bottom seat, as used in the daytime and when the berth was folded up to constitute a seat of single width, was a vacant compartment, also for storing away berth furniture, so arranged so as to be elevated or shut down at pleasure, hinges being attached for said purpose.

626

627

628

Q. 8. If this car ran on the Richmond, Fredericksburg & Potomac Railroad, and you were employed on the Louisa branch, how was it you happen to know about the construction of this car?

629 A. In the absence of the conductor of the Richmond, Fredericksburg & Potomac Railroad, which occurred occasionally for periods of ten days or two weeks, whilst engaged in drumming for passengers for that line, against the competition of the Bay Line Railroad and steamboats, my services were called there as substitute ; my own place was filled by some officer of less experience, a preference being for me to fill the place on the Richmond, Fredericksburg & Potomac Railroad, there being less travel on the Louisa Road.

Q. 9. Were these sections of berths on both sides of the avenue of the car ?

630 A. They were.

Q. 10. Were there any mattresses or cushions for these berths ?

A. There were.

Q. 11. Were any of them loose so that they could be removed ?

A. They were all loose except the back of the second tier, which was attached to the berth, to the best of my recollection.

631 Q. 12. The second tier of berths, I understand you to have said, swung down and made the backs of the lower seats ; am I right ?

A. That was a correct understanding.

Q. 13. Do you remember whether there was anything to keep the loose cushions in the upper berth from shaking out on to the floor when the cars were running ?

A. I do ; There was a moulding of slight elevation extending along the outer edge.

Q. 14. Was this wooden board of separation, or head and foot board for the extended part of the lower berth, kept there when the lower berth was closed up as a seat ?

632 A. It was not ; being moveable, it was moved and stowed away with the berth furniture.

Q. 15. Were there any pillows with this berth furniture ?

A. There were.

Q 16. Were there any blankets, or other coverings for the passengers?

A. Customary coverlets were in use.

633

Q. 17. I understand that you only occasionally had charge of the train of which this sleeping car formed a part; did you during any trip that you made with that car, see any passengers lying in these berths?

A. I did; I have seen them all occupied.

Q. 18. And during any of those trips was this car running as a day car?

A. It was used as a day car on some occasions.

Q. 19. Do you know what the occasion was of having this sleeping car on this railroad, so long ago?

634

A. It grew out of the fact of the traveling public giving out complaint of being rest-broken on this line, in contrast with the Bay Line, a competing line.

Q. 20. The Bay Line was a steamboat line, was it not?

A. It was so far as the Bay extended, but that was not all the competing part; the rest consisted of the Portsmouth & Weldon Railroad.

Q. 21. Was there any ladies' apartment in this old sleeping car you have testified about?

A. There was a small apartment with like accommodations for ladies, with a water-closet on the opposite side, and short seat, sufficient for a passenger or two, extending from the water-closet to the rear of the car.

635

Q. 22. How was this ladies' apartment divided from the gentlemen's apartment?

A. By a light wooden partition and door.

Q. 23. Was there any stove, or stoveplace in this car, as you remember?

A. There was a stove, and in use in the cold season.

Q. 24. Do you remember the kind of windows this car had?

636

A. They were what were usually styled Gothic windows.

Q. 25. I have understood from some persons that just before this late war this Richmond, Fredericksburg & Potomac Railroad had running upon it what is known

as Woodruff's sleeping cars. Did you ever see the inside of those sleeping cars?

637

A. I cannot call to mind having ever seen them.

Q. 26. This sleeping car you have described is the first one you ever saw, I suppose?

A. It was.

Q. 27. Am I right in supposing that you have not been connected with any railroad since you left the Richmond, Fredericksburg & Potomac Railroad, as you have stated?

A. You are right in thus supposing.

638

Q. 28. I now show you a model marked Defendants' Exhibit "Richmond Car," which has been produced in evidence here as a model representing one section of the sleeping car used on the Richmond, Fredericksburg & Potomac Railroad in its early days, and ask you to examine the same, and state if you ever saw a sleeping car, the sections of which were constructed like that model, and if so, where?

The introduction of this model objected to under the descriptive question of defendants' counsel, as leading, suggestive and incompetent.

639

Question withdrawn.

Q. 29. I now show you a model marked Defendants' Exhibit "Richmond Car," and ask you to examine the same, and state if you ever saw a sleeping car, the sections of which were constructed like that model, and if so, where?

A. I have seen such a car on the Richmond, Fredericksburg & Potomac Railroad, in the year 1840-41, or thereabouts.

640

Q. 30. That is the one that you have described as on the trains that you ran on that road, is it?

A. It is.

Q. 31. I now close up the upper berth, and call your attention to the fact that the back edge of the upper berth, instead of extending down and forming a sharp

angle, is constructed to form an obtuse angle, do you remember such a construction of that berth in that old car? 641

Objected to as leading.

The words: "instead of extending down and forming a sharp angle" withdrawn.

Q. 32. Question as amended repeated.

Objection repeated.

A. That is my recollection of the construction of that upper berth. 642

Model removed from the sight of the witness.

CROSS-EXAMINATION.

X-Q. 33. How long have you been engaged in the occupation of farming?

A. I have been continuously engaged for 33 years.

X-Q. 34. How large a farm?

A. 347 1-2 acres. 643

X-Q. 35. Have you been on the same farm continuously for 33 years.

A. I have.

X-Q. 36. What business did you follow for five years prior to going upon that farm?

A. My engagement on the railroad was the prior engagement to working the farm.

X-Q. 37. And you went directly from your engagement on the railroad to working the farm?

A. I did, but for a year following my engagement on the railroad there was no active participation in the farming. 644

X-Q. 38. Did the Richmond, Fredericksburg & Potomac Railroad own or control the road upon which you were conductor, running from Hanover Junction to Gordonsville, in the fall of 1841?

A. It did, so far as doing the freight and passenger transportation over that road is concerned. They controlled it, they didn't own the road or keep it up.

X-Q. 39. What year do you swear that you permanently left the employment of the Richmond, Fredericksburg & Potomac Railroad, or any of its branches.

A. I believe it was during the winter of 1846-47.

X-Q. 40. And between the fall of 1841 and the winter of 1846-7 you ran a passenger train from Hanover Junction to Gordonsville?

A. I did.

X-Q. 41. And the opportunity that you had to become familiar with a sleeping car on the Richmond, Fredericksburg & Potomac Railroad, was during those years when you took the place of a conductor on that road. Is that it?

A. Yes, sir. That was the opportunity afforded me, together with my frequent visits from Hanover Junction to Richmond, over the Richmond, Fredericksburg & Potomac Railroad. I could also add, a familiarity with the cars of that road, previous to going into the service of the company.

X-Q. 42. And the reason why you were called upon to take charge now and then of a passenger train on their road, was because the regular conductor was off drumming up passengers, as I understand, for his road?

A. Chiefly so, and on other occasions of his recreation or absence otherwise from the road.

X-Q. 43. Who were the regular conductors on the R. F. & P. R. R. on the passenger trains between the Fall of 1841 and the Fall of '46?

A. Benjamin F. Darracott; he is dead.

X-Q. 44. He was the only regular passenger conductor during that time, was he?

A. He was.

X-Q. 45. There was only one passenger train, wasn't there, on the R. F. & P. Road between '41 and '47?

A. Only one, to the best of my recollection.

X-Q. 46. If there had been two passenger trains run

on that road during that time you couldn't help but re-collect it, could you?

A. I believe not.

649

X-Q. 47. And you are just as confident that there wasn't but one passenger train run on the R. F. & P. R. R. between 1841 and 1847 as you are about the construction of that old sleeping car, arn't you?

A. Equally so as to a regular passenger train.

X-Q. 48. Was that passenger train which ran on the R. F. & P. Road between 1841 and '47 a day train or a night train?

A. In the earlier portion of that time it ran in the night, but subsequently for the most part in the day time. 650

X-Q. 49. You swear positively, don't you, that the passenger train which ran on the R. F. & P. R. R. in 1842 was a night train?

A. I cannot designate the exact time of the change of the schedule, but think it was in the year 1842.

X-Q. 50. How long was it after you went to work on the Louisa branch of the R. F. & P. R. R. in the Fall of 1841 before you first ran any passenger train on the R. F. & P. Road proper?

A. I cannot designate accurately how early, but soon thereafter, and during my service with the company occasionally. 651

X-Q. 51. How many times will you swear that you ever ran any passenger train on the R. F. & P. Road between the Fall of 1841 and 1847?

A. I could not define the number of times, but will state that I did run those cars frequently, and sometimes as much as eight or ten days continuously.

X-Q. 52. At what point was the conductor drumming up passengers when you were running his train?

A. He was sometimes north and sometimes south of the points where the competing travel diverged. 652

X-Q. 53. Who took your place on the Louisa branch of the road when you ran the R. F. & P. train?

A. Samuel Ruth, generally.

X-Q. 54. Who else?

A. R. K. Chandler on a few occasions ; a brother of mine.

653 X-Q. 55. Where did you live between the Fall of '41 and '47.

A. A portion of the time at the Junction House, Hanover, and a portion of the time at Gordonsville, the then terminus of the Louisa Road.

X-Q. 56. Who made up the berths in that old sleeping car you have tried to describe ?

A The train hands of the passenger car.

X-Q. 57. Who was that train hand or train hands ?

654 A. I can't call his name to mind ; but believe I may add that it was Charles or Dick, a colored man.

X-Q. 58. They run no chambermaids to take care of that car on the car itself, did they ?

A. They did not.

X-Q. 59. How long after you saw that car in 1841 was it before you saw any other kind of a sleeping car on the R. F. & P. road, or any other road ?

A. I cannot define accurately how long it was, but it was several years.

X-Q. 60. Where did you next see any sleeping car ; upon what road, except the one you have described ?

655 A. I believe on the R. F. & P. Road, I saw the next sleeping car.

X-Q. 61. About what year ?

A. I think I can safely say for the past six or eight years I noticed sleeping cars on the R. F. & P. Road.

X-Q. 62. Then the only sleeping car that you ever saw in your life until within the past six or eight years, was the one that you have described in this deposition ?

A. If I saw any other it didn't occupy my attention sufficiently to recollect it.

656

Adjourned at 5.15 P. M. until to-morrow at 10.30 A. M.

JO. LANE STERN,
N. P.,
Special Examiner.

June 9, 1881. 10.30 A. M.

Met pursuant to adjournment.

657

Cross-examination of THOS. T. CHANDLER resumed :

X-Q. 63. Did you ever make a night run on that old sleeping car ?

A. I have done so, I think, but my service was usually in the day time, under the day schedule.

X-Q. 64. Will you swear positively that you ever made a night run on that old sleeper ?

A. I will swear positively of having passed over the route as conductor or as passenger.

658

X-Q. 65. What was the distance and hours of the night run on that sleeper ?

A. My belief is that the distance in the night or early morn was thirty-six miles, say from Fredericksburg to Hanover Junction, and at a later period, after the completion of the road from Fredericksburg to Acquia Creek, the distance was increased about fourteen to fifteen miles, I believe, and the time proportionately increased.

X-Q. 66. How many tiers or sections of berths were there along each side of this car ?

659

A. I will not undertake to say definitely, but probably five, lengthwise in my meaning. In the other direction it consisted of three, one above the other.

X-Q. 67. How wide was the upper berth of each tier ?

A. I can't say accurately, some twenty inches wide, I suppose.

X-Q. 68. There were posts running from the floor to the ceiling in that car, were there not ?

A. The outside partition between the berths was thicker, more substantial, in the nature of panel work.

X-Q. 69. Question repeated.

660

A. The outside partition between the sets of berths was thicker, constituting the division between the berths, was of thicker panel work; my idea is the outer portion of the panel work, forming the partition between the berths, was thicker in its construction, and no posts.

661 X-Q. 70. Yes, you saw that on the model ; but what I want to know is, whether there were any posts anywhere in that car in connection with the berths, extending from the floor to the ceiling. If you don't know, say so ?

A. I don't know of any posts.

X-Q. 71. Will you swear that there were no posts in that car near the front end of those berths, extending from the floor to the ceiling ?

A. I will, to the best of my belief and recollection.

X-Q. 72. Which was the widest, the lower berth or the partition you tell about ?

662 A. The lower berth, when used as a double berth, was wider than the partition.

X-Q. 73. When the lower berth was used as a seat or single berth, which was the widest, the partition or the berth ?

A. They were of equal width.

X-Q. 74. When the middle berth was in position for night use, which was the widest, it or the partition ?

A. They were the same width, my impression.

X-Q. 75. How wide was that partition ?

A. Twenty inches, I suppose.

663 X-Q. 76. Which was the widest, the upper berth or the partition, when that berth was in position for night use ?

A. Same width as the partition.

X-Q. 77. Did that partition extend clear from the ceiling down to the floor, or only to the top of the seat ?

A. It extended to the top of the seat, and there was a continuation of framed work to the floor.

X-Q. 78. Just explain to the Court, how, if this lower berth or seat was of the same width as the partition, there could have been any extension down to the floor ?

664 A. It was a simple extension of planking to the floor, making separate compartments under the lower berths.

X-Q. 79. How far did this planking extend out into the car beyond the seat ?

A. This partition work between the three tiers of

berths was of uniform width and extended no farther into the interior of the car than the berths did.

X-Q. 80. Were these partitions removable so that they could be taken out? 665

A. The partition work of which I have just spoken was not movable.

X-Q. 81. You have seen a model or picture or representation of the berths of this car before you came on the stand, haven't you?

A. I had seen it on one occasion—a model, I mean.

X-Q. 82. Who showed it to you and what did you see?

A. It was in the possession of W. N. Bragg.

X-Q. 83. When and where did Bragg show you this model? 666

A. About the middle of March, at the Monumental Hotel, in the City of Richmond.

X-Q. 84. How did you happen to be there?

A. I was in the city on a visit and stopped at that hotel.

X-Q. 85. Did Bragg send for you to come to the city or how did you happen to meet him with his model of that old car?

A. He did not send for me to come to the city. So far as I know our meeting there was accidental. 667

X-Q. 86. You and Bragg are old friends, ain't you?

A. He is an acquaintance of long standing, and none other but friendly intercourse has occurred between us.

X-Q. 87. Did Bragg have this model with him the first time he saw you?

A. When I first saw Bragg at the Monumental Hotel, he had not the model with him. I heard him state to Mr. Hunter, the proprietor of the hotel, that he had such a model, I think at the American Hotel. Mr. Hunter proposed and did send for it and had it brought to his hotel. 668

X-Q. 88. How did you happen to go to Hunter's hotel?

A. Well, I was stopping in the city, and Hunter was an acquaintance of mine.

X-Q. 89. Had you ever stopped at his hotel before in you life?

669 A. Except temporary calls, I had not.

X-Q. 90. Had you ever eaten a meal's victuals there before?

A. I do not recollect to have done so.

X-Q. 91. What's Hunter's first name?

A. Stephen Hunter.

X-Q. 92. What was the occasion of your visit to the city the first time you ever saw that model at the hotel?

670 A. My visit was prompted at that immediate time by the request of a Mr. Worden to come to the city, as it was desirable on the part of some person or persons to learn of me whether I had any knowledge of a sleeping car used on the R. F. & P. R. R. during the period of my engagement in the service of that company as passenger train conductor.

X-Q. 93. How long did you stay at Hunter's Hotel that trip?

A. About a day.

X-Q. 94. Who paid your bill?

671 A. I was introduced to Mr. Munson on the occasion of my visit there, who made some inquiries of me about the sleeping car, who also enquired of me when I expected to leave, and told me he would make my bill all right at the hotel.

X-Q. 95. Who was present at the time you were looking at that model in Hunter's Hotel in March last?

A. Mr. Hunter, I believe, was present; his clerk behind his desk in view of the model, and some other gentlemen were present; hotel boarders, I presume; strangers to me.

672 X-Q. 96. Mr. Hunter showed you the model, didn't he?

A. He did not.

X-Q. 97. Who did?

A. Mr. W. N. Bragg.

X-Q. 98. Was this man Worden there at the time you were looking at the model?

X-Q. 133. Bragg told you how that car was constructed, didn't he?

A. Bragg asked me about the sleeping car formerly used on the R. F. & P. R.R., as to my recollection of its use and construction. I gave him my ideas about it. In the main, I think he concurred in my description, throwing in some conversation, as his general habit is, being a good deal prone to talk. 689

X-Q. 134. There are lots of men that you would believe what they said a great deal quicker than you would Bragg, ain't there?

A. I have no reason to doubt his veracity in the smallest degree.

X-Q. 135. You have taken a great deal of pains and put yourself to a great deal of trouble of making different trips from Caroline County to this city; by having different interviews with Bragg and Worden and Hunter, and having conversations about that old sleeping car; by examining a model of that old sleeping car and seeing Bragg work it in your presence; by making an affidavit of the construction of that old sleeping car, and then reading that affidavit, or having it read to you, just before you went on the stand; you have taken a great deal of pains to do all of this, haven't you, so that there wouldn't be any variance in your testimony between the construction of that old sleeping car and this model? 690

A. I have not taken a great amount of pains or trouble in describing the sleeping car. Have not made any effort to guard against a variance in the sleeping car and the model furnished; I have made but few special visits here on that account. Have never conversed with Bragg on the subject exceeding twice, I believe, and one of the occasions of meeting him then was accidental. I have never conversed with Hunter at all as to the details of the construction of this car, and have never had any extended conversation with Worden beyond furnishing him my affidavit in somewhat a detailed manner. 691

X-Q. 136. When did you last see Worden and talk with him? 692

A. Yesterday forenoon.

693 X-Q. 137. The last thing he said to you was stick to that model, was it?

A. I have no recollection of his naming a model.

X-Q. 138. Are you stopping with Hunter now?

A. No, sir.

X-Q. 139. Did you stop with him when you came to town this time?

A. I did not.

X-Q. 140. Where are you stopping?

A. At the American Hotel.

694 X-Q. 141. Bragg is stopping there, and that's the place where that model was in March, wasn't it?

A. I have seen nothing of Bragg since I have been to the city; nor do I know his whereabouts. If the model was at the American Hotel in March I didn't know it.

X-Q. 142. You never heard of the model being at the American Hotel in March, did you?

A. I have no recollection of so hearing.

X-Q. 143. Did you ever testify in a patent railroad brake case?

A. I never did.

695 X-Q. 144. Did you ever lie down in one of the berths of that old sleeping car?

A. I think not.

X-Q. 145. Your recollection isn't very good, is it, as to matters which happened thirty-five years ago?

A. I believe my recollection is more retentive about matters which occurred in my youthful days, and of matters and occurrences 30 and 35 years ago, than of matters that transpired within the last 15 or 20 years.

X-Q. 146. How high was that car on its wall sides, and how high in the centre?

696 A. I suppose it varied from side to centre from $6\frac{1}{2}$ to 7 feet.

X-Q. 147. How wide was the car?

A. Seven and a half to eight feet wide.

RE-DIRECT EXAMINATION.

R-D-Q. 148. You were one of the associate justices holding the county court of Caroline county, Virginia, for some years prior to the change of the constitution of this State, were you not? 697

A. I was.

R-D-Q. 149. You have said in your cross-examination that you noticed sleeping cars in later years passing on that road; how did you know they were sleeping cars?

A. Both by observation and hearsay.

R-D-Q. 150. Were they marked on the outside "Sleeping Car" by a sign? 698

A. They were lettered with those words, "Sleeping Car."

R-D-Q. 151. And that's the way you knew they were sleeping cars, is it?

A. That's the way I determined that they were sleeping cars.

R-D-Q. 152. When you made affidavit in fall last, did you tell Worden what to put in it in response to inquiries as to what you knew about the sleeping car?

A. I dictated my affidavit and he wrote it down.

699

R-D-Q. 153. In my first interview with you when you came to Richmond to see me at my request, communicated through Mr. Worden, did I say anything more to you about this matter than to ask you to tell me all you remembered about the sleeping car you have now testified about as having been used from '41 to '47 on the R. F. & P. R. R.?

A. That was the whole request made of me—to tell all I knew about that sleeping car; that's all you said.

R-D-Q. 154. And I left the explanation of that car alone to you to make, did I not? 700

A. You did so.

R-D-Q. 155. And that explanation, which I remember was quite full, was made by you before you saw that model, was it not?

A. I think it was.

701 R-D-Q. 156. When you came to this city at this time at my request, to testify in this case, and saw me, is it not true that I simply asked you to again tell me what you remembered about that old car, and left it for you to explain?

Objected to as leading.

A. Such is the fact.

702 R-D-Q. 157. And then did I not read over your affidavit, which did not go out of my possession, in a rapid, mumbling, or low tone, and say, that the description you have given corresponds with the affidavit you have formerly made, or words to that effect?

A. You did so state, or words to that effect.

R-D-Q. 158. And did I not stop somewhere in the midst of that affidavit and say, there is no use of my reading it, or looking it over further?

A. You said something substantially to that effect.

R-D-Q. 159. Have you any interest of any kind to be affected by the giving of your testimony in this case?

A. None on earth, that I know of.

703 RE-CROSS-EXAMINATION.

R-X-Q. 160. You came here voluntarily to give this testimony; you were not subpœnaed?

A. I came voluntarily; I was not subpœnaed.

THOMAS T. CHANDLER.

Adjourned at 4:30 till to-morrow at 10 A. M.

JO. LANE STERN, N. P.
Special Examiner.

704

June 10, 1881, 10 A. M.

Met pursuant to adjournment.

A. He was there during the day, but I do not remember his presence at the time of my looking at the model. 673

X-Q. 99. About how many persons were present?

A. In a very small compass near the model, I will assert as many as four persons, including myself, were present.

X-Q. 100. Mention the names of those four, and the names also of any boarders you may know being present during the examination of the model?

A. Wm. N. Bragg, Stephen Hunter, myself, the hotel clerk. I do not know the names of the boarders. There were some seated about in the distant part of the room from the clerk's counter. 674

X-Q. 101. Bragg took down and arranged the berths of the model, and showed you how the think worked, didn't he?

A. He took it out of the case which contained it and adjusted the berths.

X-Q. 102. It was the same model you have examined in connection with the deposition, isn't it?

A. It is the same one, or just like it, to my recollection.

X-Q. 103. Who made that model, did you? 675

Objected to as calling for hearsay.

A. I don't know, and did not hear.

X-Q. 104. When did you first see or hear from this man Worden about that old car?

A. Last Fall.

X-Q. 105. Did you make an affidavit about this old car last Fall?

A. I did.

X-Q. 106. Who did you make it before? 676

A. Jo. Lane Stern.

X-Q. 107. Did you come down to this city for the special purpose of making it, from your farm up in Caroline County?

A. I was prompt to come on a particular day on that

account, but my trip was not exclusively on that business.

677 X-Q. 108. Who paid your expenses that trip?

A. Mr. Worden called at my house in my absence and left a very brief note stating his desire that I come to Richmond the next day, and I suppose to insure my doing so; left a dollar and ten cents with my family, which he stated he supposed would cover my expenses on the cars to the city from Hanover Junction.

X-Q. 109. Did you see Bragg that trip?

A. I am not certain that I did.

678 X-Q. 110. The first model that you ever saw professing to represent or which did represent in any respect that old sleeping car on the R. F. & P. R. R. was the model you saw last Fall at Hunter's Hotel, was it not?

A. It was, except on the present occasion.

1 P. M., adjourned to 2 P. M.

2 P. M. Resumed:

X-Q. 111. Did you ever make more than one affidavit about this old sleeping car?

A. I never did.

679 X-Q. 112. Was that affidavit already written out last Fall at the time you signed it?

A. No; it was not.

X-Q. 113. Have you seen a written or printed copy of that affidavit since you came to the city to give your testimony?

A. I have.

X-Q. 114. Who showed it to you?

A. Mr. Munson.

680 X-Q. 115. Then you refreshed your recollection as to the construction of that old sleeping car by reading over that affidavit, did you not?

A. Mr. Munson read the affidavit over. It amounted to very little towards refreshing my memory; possibly to some extent.

X-Q. 116. Until you talked with Worden last fall, had you ever talked with any person about the construction

and arrangement of that old sleeping car during the thirty-three years you have been on the farm?

A. I think not.

681

X-Q. 117. Was Worden the first man you talked with about the construction and arrangement of that old sleeping car for thirty-three years?

A. I believe he was.

X-Q. 118. When you first began to recollect the construction of that old sleeping car your recollection was not distinct and positive as to its internal construction, was it?

A. It has been very clear since I saw it in use on the road.

682

X-Q. 119. You have never given any different construction of that car since you and Worden talked it over last fall, as to its internal construction, except the one you have given here, to any person whatever, have you?

A. I have never given to any person a different representation of its construction from that given to Mr. Worden or given in the affidavit.

X-Q. 120. Don't you know that when you first began to try and recollect about the construction of that sleeping car you could not recollect that there was any other stationary partition in that car except the partition that divided off and formed the ladies' apartment?

683

A. I do not have any such recollection about my mind undergoing a change about the partition divisions.

X-Q. 121. Will you swear positively that there was a stationary separation or board partition between the tiers of three berths in that old sleeping car?

A. I will.

X-Q. 122. You will what?

A. I will swear positively that there was a partition board of separation between the several berths.

684

X-Q. 123. Yes; and that partition board was about four or six inches wide, and held up the ends of the bunks. Isn't that what you have been trying to swear to, and isn't that all that you have any honest recollection about?

685 A. The partition was about twenty inches wide, corresponding with the whole width of the berths—the single berths.

X-Q. 124. Will you swear that that partition was over twelve inches wide, except the one forming the ladies' apartment?

A. I will swear, as I have stated, to the best of my judgment, it was at least twenty inches wide.

X-Q. 125. Were there any holes or openings in any of those partitions?

A. None.

686 X-Q. 126. How near did the front edge of those upper berths go to the carlines of the car when they were raised up?

A. They went in very close contact; I can't say positively that they touched.

X-Q. 127. There was a board dropped down from the ceiling of the car that this upper berth went up against, wasn't there?

A. There was a board extending along the top of the car, behind which this basis of a berth, when raised, took position when adjusted.

687 X-Q. 128. How wide was this board, or how far did it extend down into the car from the ceiling?

A. I suppose four inches wide.

X-Q. 129. In the description you have given on this record you attempted to describe the model of the car, instead of the car itself, haven't you?

A. My attempt has been to describe the car itself.

X-Q. 130. And at the same time to give a description of the model?

A. I designed no description of the model.

X-Q. 131. Worden told you how he built that car, didn't he?

688 A. Worden did not tell me how he built it?

X-Q. 132. But told you how it was built?

A. We conversed about the car and its construction; but I don't think he said any more in the conversation, if as much, as I did myself.

JOHN. W. WOOLFOLK, next witness, of lawful age, being duly sworn, deposes and says as follows: (Witness introduced on behalf of defendants.) 705

Q. 1. Please state your name, age, residence and occupation.

A. John W. Woolfolk; I will be 58 if I live to see the 23rd of this month; Caroline county, Virginia; I am a farmer.

Q. 2. How large a farm property have you in acres?

A. In Caroline, 1,070 acres; in Hanover, about fifteen or sixteen hundred acres.

Q. 3. When did you commence riding upon the Richmond, Fredericksburg & Potomac Railroad? 706

A. In 1835 or '36; the road started in '35, I think.

Q. 4. Where were you in '39, '40, '41, '42?

A. In '39 and '40 I was at boarding-school, in the upper end of Caroline county, near Guineas Depot; in '40 I came to Richmond College, here, and was here in '41 and until the summer of 1842; in the fall of '42 I went to West Virginia.

Q. 5. While at the Richmond College, where was the home of your parents?

A. Near Milford Depot, in Caroline county.

Q. 6. You boarded in the college, I suppose, and occasionally went home? 707

A. Yes, three or four times a year, I generally did.

Q. 7. During the time you were at school at Richmond College, was there a sleeping car in use on the R. F. & P. R. R?

A. Yes.

Q. 8. Did you during that period ride in that car while going to and from your home and Richmond?

A. Occasionally I did.

Q. 9. Do you remember how that car was constructed, and if so please explain it? 708

A. In the first place it was divided into two apartments, ladies' and gentlemen's apartments; then there were three berths in sections, one above the other; and so arranged that it could be used as a sitting car or

709 sleeping car ; the bottom berths when used as a sitting car, being the bench or seat on which they sat ; the middle berth letting down and becoming the back to the seat, dropping down ; and the upper berth hooked up, fastened up, to the top of the car at an angle of about forty-five degrees.

Q. 10. Was there more than one of these sections of three berths one above the other ?

A. Yes, the sections were some six or six and a half feet long. I was not quite as tall as I am now, but I could lie down in them quite conveniently.

Q. 11. Were these sections of berths on both sides on the walls of the car ?

710 A. Yes, sir.

Q. 12. Could passengers sitting in one section put their shoulders against passengers sitting in the next section ?

A. No.

Q. 13. Why not ?

A. Because there was a plank partition running up dividing the berths.

Q. 14. How high up did that partition run between the berths ?

711 A. It ran to the top of the car.

Q. 15. You say the upper berth went up to the roof of the car and was fastened there, how was it fixed when it was to be slept in ?

A. It was let down horizontally and set down on a shoulder or fastened by a bolt ; I don't know which ; it was fastened horizontally.

Q. 16. What held the edge of it next to the side of the car ?

A. A hinge of some sort.

712 Q. 17. Were there any cushions or mattresses in these berths ?

A. Yes.

Q. 18. Were they loose ones or fast ?

A. The middle one was fast, because that remained on the berth when it was let down ; I don't recollect whether the bottom one was fastened or not.

Q. 19. Do you recollect whether the bottom seat or berth had any means of making it wider for a berth than it was for a seat? 713

A. Yes, it had.

Q. 20. Explain what?

A. There was a piece that either let down or turned over, that had legs to it. Whether it raised up and had legs under it or turned over and rested upon legs I don't remember. I know that piece was there.

Q. 21. Did you ever sleep on this lower berth?

A. I don't recollect ever sleeping on this lower berth. The middle berth I preferred.

Q. 22. You remember sleeping on the middle berth then, do you? 714

A. I remember lying in it, anyway.

Q. 23.

Q. 24. When lying in that berth could you look into the berth next beyond you?

A. Not without looking around the partition.

Q. 25. When the lower berth had this piece extending it to make it extra wide, could persons in it look right into the next berth?

A. No, there was a piece, a board made to fit in between them. 715

Q. 26. Did that piece or board stay there when that berth was made narrow or put into seat form?

A. No, sir.

Q. 27. Were there any pillows in these berths?

A. Yes, there was a short pillow movable that wasn't attached to the berth, or rather the lower or middle one.

Q. 28. Was there anything to cover yourself with, when you lay down in this berth?

A. As well as I recollect they did have blankets; that's my recollection. 716

[No 29th, J. L. S., N. P.]

Q. 30. What divided the gentlemen's from the ladies' apartment?

A. There was a plank partition across the car with a door through it.

Q 31. Did you ever see anybody lying down in the ladies' apartment?

717 A. Yes, sir; I have.

Q. 32. Did you ever see anybody lying down in the upper berths?

A. I can't say that I recollect of ever seeing anybody ying in them.

Q. 33. Can't you recollect being in the car at night when it was full of passengers occupying the berths, or apparently full?

A. I don't know that I ever saw them all occupied, but I have seen a good many.

718 Q. 34. What was the occasion of your seeing this person in the ladies' apartment?

A. I was travelling from Richmond with some young ladies in the day time, and I went with the young ladies into the ladies' apartment, myself and another man, and there was a sick lady, a passenger, going North, and she occupied the middle berth.

Q. 35. Did they let you stay there?

A. Well, the captain came in twice and told us we must vacate, and the second time gave as his reason that this lady was sick and might want to get up.

719 Q. 36. When you took this car in Richmond where did you find it?

A. It was on Broad street; down at the old Fredericksburg depot; we got on there.

Q. 37. How long before the train was to start could you go into that car?

A. It was some fifteen minutes or may be a half hour before it was the regular time to start, but then trains didn't run as regularly as they do now, sometimes they had to wait an hour or two for the Petersburg train.

720 Q. 38. When you were first asked if you remembered this car you remembered it well, did you not?

A. I remember the sleeping car perfectly; I have thought about it since; more has come to my recollection since.

Q. 39. Did you have to pay for riding on that car ; I mean for the extra privilege of the sleeping berths ?

A. I don't recollect paying anything extra.

721

Q. 40. Wasn't it the custom for the company to keep that car more especially for the Petersburg passengers than for the Richmond ones ?

A. I don't know about that, as it was used as a sitting car generally in the day time.

CROSS-EXAMINATION.

X-Q. 41. Whatever recollection you have of that old sleeping car is derived from the fact of your riding upon it while you were at college at Richmond ; is that it ?

722

A. The case of this sick lady was after I came from West Virginia, in '43 ; I recollect while I was at school of riding in the car ; of the *car*, at any rate.

X-Q. 42. At school at Richmond ?

A. At Richmond College.

X-Q. 43. What time in 1840 did you go to school at Richmond ?

A. I commenced in September, '40, and went to Richmond College until June, 1842.

X-Q. 44. Who was the conductor on the road during that time ?

723

A. I don't recollect certainly who were the conductors on the road ; I can't call to mind ; I know John Holmes was one of the old conductors, but whether he was there then I can't recollect.

X-Q. 45. The conductor who ran and operated that car daily during the years 1840-42 would know more about the construction and arrangement of those berth and the internal constructions of that car than you do, wouldn't he ?

A. I suppose he would certainly have an opportunity of knowing, but what I saw I would know as well as any body else ; it was before my eyes.

724

X-Q. 46. Do you know the old Mr. Adams who was formerly a conductor on that road ?

A. I know Captain Adams, of Fredericksburg, who

was a captain on that road; by captains I mean conductors; these captains are conductors ; called captains now.

725

X-Q. 47. Did you know Samuel Ruth in his lifetime, a conductor on that road?

A. I did.

X-Q. 48. He knew how that old sleeping car was built, did he?

Objected to as incompetent, irrelevant and immaterial.

A. I don't know that I know what another man knows; I can't say what another man knows.

726

X-Q. 49. If old man Adams should now swear, and if old man Ruth had sworn in his lifetime, that that old sleeping car was constructed and ran on that road with upright posts, instead of partitions, supporting the outer ends of the berths, and the upper berths constructed permanent and stationary, you would believe they knew what they were talking about, and believe they told the truth, wouldn't you?

A. No, sir; I wouldn't believe any man who would tell me there wasn't any partitions between the ends of

727

of these berths, for my recollection is such that I wouldn't believe any man.

X-Q. 50. You think that your boyish recollection about the construction of that old sleeping car, obtained while you were frisking around a couple of young ladies in the ladies' apartment, is better than the actual knowledge of old Mr. Adams and Ruth, don't you?

A. My memory of that old sleeping car is not confined to the time I was frisking around with those two young ladies, as you choose to term it, but over a term of four or five years that I was in the habit of riding

728

over the road.

X-Q. 51. Where did you and your gentlemen friends and those young ladies sit down in the ladies' apartment?

A. We sat on the opposite side of the car. That was fixed for sitting.

X-Q. 52. That ladies' apartment was one berth long, wasn't it?

A. It was more; it was two, at least; how much longer I don't know; it was certainly two. 729

X-Q. 53. It was three, wasn't it—three sections of berths long?

A. That I don't recollect; I know it was two.

X-Q. 54. Your recollection is just as good that the ladies' apartment was two sections or berths long, as that there were partitions between the berths, or that the upper berths were movable, isn't it?

A. My recollection is that they were as much as two long.

X-Q. 55. Yes, you swore positively to that; and you are just as positive to that fact as you are that there were partitions between the berths, and that the upper berths were moveable; is that so? 730

A. I say that I know that the ladies' apartment was at least two berths long, or sections; and there were partitions between the sections, and the top berth was fastened to the top of the car; I mean by that that it could be fastened up to the top of the car.

X-Q. 56. And your recollection is just as distinct, is it, that the ladies' apartment was two berths or sections long, as that the berths or sections were separated by partitions, and the upper berths were moveable? 731

A. I have answered that question, I think.

X-Q. 57. You haven't answered the question; please do so, and answer it yes or no.

Defendants' counsel instructs the witness that he is not required to answer any question "yes" or "no" whereby he would be made to say what the counsel examining him wishes him to say for his purpose. 732
On the contrary, he is privileged to answer any question as he desires to answer it.

Complainants' counsel instructs the witness that it is his duty to answer every

733

question propounded to him directly and unequivocally, but that he may accompany his answer by any explanation of the subject matter of the question.

734

The defendants' counsel again instructs the witness that he is not required to answer "yes" or "no" to any question, especially when such an answer would place him in the false position of being misrepresented. That, however, he must answer every question, and do so as directly to the matter inquired about as he can, but may answer the question in any manner that seems to him appropriate and proper.

A. I think I have answered the question in saying that this ladies' apartment was two sections or berths long, and there was a partition between those berths, and the upper berth fastened to the top of the car. I can't see that I can express it any plainer than that.

X-Q. 58. And your recollection is equally distinct upon all those points, is it?

735

A. My recollection is that that was the state of the case.

X-Q. 59. And your recollection is just as positive, or isn't it, that the ladies' apartment was two sections or berths long, as that the upper berths were movable, and that there were partitions between the berths?

A. I must give the same answer that I did, that my recollection is that the ladies' apartment was at least two berths long, and that there were partitions, and that the upper berths fastened to the roof of the car.

736 X-Q. 60. And you recollect the fact, do you, just as positively and distinctly, that the ladies' apartment was two berths or sections long, as that there were partitions and movable upper berths in that car. If you are going to answer that question please do it?

A. I think I have answered it as plainly as I can.

The question says "two berths." I said "at least two berths or sections."

X-Q. 61. That's all the answer you will give to that question is it? 737

A. Yes, sir. I think the question is answered.

X-Q. 62. Was there any water closet in that car, if so, where was it?

A. I think there was; and it was in the ladies' apartment.

X-Q. 63. Was there any stove in that car? If so, where was it?

A. I don't recollect the stove.

X-Q. 64. How high was the centre of that car, and could you look out of any windows in the raised roof in the top of the car? 738

A. I suppose it was about eight feet, and I do not recollect any windows in the roof.

X-Q. 65. With your recollection of that car can't you tell whether there were any windows in the roof?

A. I don't recollect of any, that is, I am not positive; but I don't think there were any.

X-Q. 66. Don't you recollect, or does your recollection fail you on that point, as to whether the stove sat in the aisle in the middle of the car, without any berths in the section opposite the stove, but simply the seats? 739

A. I recollect nothing about the stove?

X-Q. 67. Have you any recollection as to whether there was any space the length of two berths, where there were no berths except the bench or seat?

A. No, I have no such recollection.

X-Q. 68. Do you know whether or not there was any such space in that car?

A. No, sir; I know nothing of any such space.

X-Q. 69. There might have been a space in that car for a distance of two or three berths or sections in length, where the berths were supported by narrow partitions or posts six inches wide, and where the upper berths could not be moved, might there not? 740

A. I don't know of any such place. I don't see how

it could have been there. Two or three berths long would have taken up half the car.

741 X-Q. 70. Will you swear positively there were not two or three sections or berths in length, in that car arranged in that way?

A. I don't believe there was any such place in it.

X-Q. 71. I don't care what you believe about it, and I recognize that your recollection of that car is founded largely upon your belief that you have formed in some way or another; but what I want to know is, whether you will swear positively that there were not several sections in that car separated only by narrow partitions six inches wide at their outer or aisle edge, and having their upper berths fastened permanently to the side of the car, and their outer or aisle edges fastened permanently to this partition?

742

A. I have no recollection of any such thing or space; and I think my recollection of the car is such that if there had been I would have recollected it.

X-Q. 72. But your recollection of that car isn't so distinct that you will swear none of the berths or sections were constructed in that way, is it?

A. I think my recollection is such that if it had have been such I should have remembered it.

743

X-Q. 73. Have you intended to swear positively that the upper berths in the ladies' apartment were movable?

A. My belief is that they were, from what I saw of them on the occasion of that sick lady.

X-Q. 74. That was the only time you ever saw that ladies' apartment, was it?

A. No, it was not. I had been through it at other times.

X-Q. 75. Have you any recollection at all whether the upper berths in that ladies' apartment was movable or not?

744

A. They were fixed, to all appearances, as they were in the other part of the car, and they were fastened up on the occasion of which I speak.

X-Q. 76. You recollect seeing them move, didn't you, the upper berths in the ladies' apartment? 745

A. Not on the occasion of the sick lady. They were then fastened up. Of course that was then day time.

X-Q. 77. In which section of the ladies' apartment was the sick lady?

A. She was in the middle berth on the right hand side of the car going north. I can't tell which section, whether it was the rear or front section.

X-Q. 78. Was there a section in the ladies' apartment on the side having the water closet?

A. Yes; there were sections on both sides of the car.

X-Q. 79. How many sections or berths in length in that ladies' apartment were there on the side having the water closet? 746

A. My recollection is that there was one section of berths on the side having the water closet and two on the other. That's my impression.

X-Q. 80. Your recollection is just as distinct that there were board partitions between the tiers of berths in the ladies' apartment as it is that there were board partitions separating the berths in the gentlemen's apartment?

A. I know that there was a board partition separating two sections of berths in the ladies' apartment on one side, for part of our party was sitting on one side and part on the other. 747

X-Q. 81. That was at the time the sick lady was there?

A. Yes, sir.

X-Q. 82. Then the sick lady was in the berth over the axle and next to the water closet at that time, was she?

A. I don't know whether she was over the axle, for I don't recollect whether the water closet was forward of the berth or in the rear of it. 748

1 P. M.—Adjourned to 2 P. M.

2 P. M.—Resumed.

749 X-Q. 83. Were there any windows in each of those sections?

A. Yes, sir; there were windows along the side of the car.

X-Q. 84. How many in each section?

A. That I do not recollect particularly, how many in each section, but there were windows along the sides.

X-Q. 85. Have you ever seen what purported to be a model or representation of this car?

A. I have seen what purported to be a model of one section of that car.

750 X-Q. 86. When was that, and who showed you the model?

A. Mr. Bragg showed it to me, and it was within the last three or four months.

X-Q. 87. Mr. W. N. Bragg, of this city?

A. It was W. N. Bragg.

X-Q. 88. Who was present when he showed you that model, and where was it?

A. It was in the American Hotel here, and, as well as I recollect, Mr. Worden and Charles Coleman.

751 X-Q. 89. Who is Charles Coleman?

A. He is a gentleman of Hanover County, and was at one time a section master of the Fredericksburg Railroad, I think. He was an employee at least.

X-Q. 90. Is he here and going to give his testimony?

A. He is in Richmond. I have seen him to-day, and he asked me if they had gotten through with me; so I suppose he is going to give his testimony.

X-Q. 91. Bragg and Worden showed you and Coleman how that model worked, didn't they?

752 A. They showed us the model. I don't know that they showed us particularly how it worked. We looked at it and saw.

X-Q. 92. When was the next sleeping car you ever saw after this old one you have tried to describe?

A. Well, I couldn't tell you exactly what date; but I

think it was on the R. F. & P. R.R. ; I am not certain about that.

X-Q. 93. That was a Woodruff sleeping car, wasn't it ? 753

A. I don't know certainly ; I think it was the one on the road before the " Pullman," as well as I recollect.

X-Q. 94. Did you ride in that car ?

A. I don't recollect about riding in it.

X-Q. 95. Were you inside of it ?

A. I have been through them ; but whether it was that or the Pullman car that I went through I don't recollect.

X-Q. 96. The sleeping car that you next saw had fixed partitions running from the floor to the ceiling, didn't it ? 754

A. I don't recollect. I went through more to look at the workmanship of the car than I did the construction of it.

X-Q. 97. You have no recollection, then, as to the internal construction of that sleeping car you next saw ?

A. Not particularly. I didn't ride in it ; merely went through it.

X-Q. 98. Then the only car for sleeping purposes you ever saw and knew anything about on the R. F. & P. R. R., before the introduction of the modern sleeper, was the old sleeping car you have described. Is that so ? 755

A. That question would require some length to answer. There are what they call bunk cars on the road ; for instance, a carpenter has a bunk car, I believe they call it. They move them up and down the road wherever they are at work. They have cars that they live in, switched off the track ; these bunk cars I mean.

X-Q. 99. I am not asking you about any bunk cars, or cars that people live in, running on that road ; but have you any knowledge of any sleeping car run on that road prior to the introduction of the modern sleeper ? I don't ask you to repeat anything that Bragg and Worden have tried to talk into you ; but answer 756

the question, of your own knowledge—other than this old sleeping car you have tried to describe?

757

A. In the first place, Bragg and Worden tried to talk nothing into me. I speak of what I remember myself. I don't know what he calls the modern sleeper; when it was introduced. I know that there have been sleeping cars on the road for a good many years, but I don't know how long.

X-Q. 100. But you never rode in a sleeping car, and don't pretend to know anything about sleeping cars, except the one you rode in forty years ago. Is that it?

758

A. It hasn't been quite forty years. I don't know that I have ridden in one for twenty years—since the war; but I have been through them repeatedly, standing at Milford.

X-Q. 101. Have you ever made an affidavit about the construction of that old sleeping car?

A. Yes, sir.

X-Q. 102. When, and who for?

A. I don't recollect the time distinctly; but to Mr. Stern.

X-Q. 103. Have you ever made more than this one affidavit?

759

A. No, sir.

X-Q. 104. Have you seen that affidavit lately, or a copy of it?

A. No, sir; I have not.

X-Q. 105. Have you seen or heard read lately what purported to be an affidavit of any person giving a description of that car?

A. No, sir; I have never seen or heard from that affidavit since it was made. I think I did hear Charles Coleman's at the same time I gave mine. It might have been the day before; not since.

760

X-Q. 106. Did you come down from Caroline County several months ago for the special purpose of looking at that model and talking up matters as to that old sleeping car?

A. I received a letter from Wm. N. Bragg asking me to come down here; not to see that model, for I had

never heard of it until I got here, nor to talk up the old sleeping car either.

X-Q. 107. You didn't know what you were coming for, did you? 761

A. He wrote me word he wanted me to come to be asked what I knew about the car.

X-Q. 108. Did you write him anything that you knew about the car?

A. No, sir; I met with him on the train going up to his place. That was the first time anything was said to me about the car. He asked me if I remembered it.

X-Q. 109. Your recollection about the internal construction of that car was not very distinct when first spoken to about it, was it? 762

A. Yes, sir; it was.

X-Q. 110. You say you have thought about it since, and more has come to your recollection since. What is it that has come to your recollection since?

A. Well, I don't think I could tell exactly, except the arrangement of that bottom berth.

X-Q. 111. The fact that there were any partitions in that car, or that the upper berths were moveable, were two things that have come to your recollection since you saw Worden and Bragg and their model? 763

A. No, sir.

X-Q. 112. Are you one of the men that went in with Worden and Bragg several years ago and attempted to beat the Tanner Brake Patent by swearing to an old brake on the R. F. & P. R. R.?

A. No, sir; I never heard anything about it.

X-Q. 113. You and T. T. Chandler, who has just left the stand, are old and great friends, are you not?

A. I have known Mr. Chandler for a good long time; but then that is all. My acquaintance is slight with him. 764

X-Q. 114. You know the hotel keeper, Hunter, up here, don't you?

A. At the St. Claire Hotel? I can't say I have any personal acquaintance with him; I know of him.

X-Q. 115. You came here voluntarily to give this testimony, didn't you ; not subpoenaed ?
765

A. I did, sir.

X-Q. 116. Coleman is going to swear to the same thing you are going to swear to, ain't he ?

Objected to as irrelevant, immaterial
and incompetent.

A. I don't know what Mr. Coleman is going to swear to ; I don't know anything about it.

RE-DIRECT EXAMINATION.

766

R-D-Q. 117. You would give your testimony concerning any matter within your knowlege, if you were requested to do so, and could without injury to your business and without requiring to be subpoenaed, would you not ?

A. Yes, sir ; I would, as I have done in this case.

R-D-Q. 118. If it could now be made certain that the ladies' apartment in that car you have testified about on the R. F. & P. R. R. was only one berth long, or that it was three berths long, would that in any manner
767 change your recollection that there were fixed partitions between the sections of berths, and that the upper berths were hinged to the car side and swung up to the roof and there fastened at the front edge ?

A. In regard to the balance of the car, it wouldn't make any difference ; that is in having those partitions, and the suspension of the berths.

R-D-Q. 119. Have you seen the model referred to, except upon the occasion testified to by you ?

A. No, sir. I haven't seen it but that once.

R-D-Q. 120. Was the meeting of Bragg as a passenger on the train accidental, so far as you know ?
768

A. Yes, sir.

R-D-Q. 121. Has any one, at any time, tried to put into your mind any of their ideas of the construction of that old sleeping car ?

A. Certainly not that I know of.

R-D-Q. 122. Have you any interest to be affected in any way by the testimony you have here given?

A. None in the world that I know of.

769

RE-CROSS EXAMINATION.

R-X-Q. 123. If it could be made certain that there was no partition in the gentleman's apartment, separating the berths, except a post or partition six or eight inches wide, holding up the outer edge of the berths, and that the upper berths in that apartment were rigid and stationary, would this fact change your recollection in any manner that the ladies' apartment of that old sleeping car, was at least two sections long?

770

A. You put in an "if" there that is an impossibility in the first place. If you suppose an impossibility I can't say whether it would alter my opinion or not, you can't alter my recollection.

R-X-Q. 124. In your opinion it would be an impossibility to prove that the ladies' apartment of that sleeping car was one section long only?

A. I said the impossibility there referred to there being no partition between the gentleman's apartment. That's what I understood.

R-X-Q. 125. But in your opinion it would be impossible to prove that the ladies' apartment was only one section long. I don't ask you what you said, but about your opinion?

771

A. I know there was one section, and then the water closet which lengthened it. It was longer than the section; and it is my opinion that it was two sections long.

R-X-Q. 126. You have sworn positively, three or four times, that it was two sections long, the ladies' apartment, you have sworn positively that you and your lady friends sat on each side of a partition between berths in the ladies' apartment, and you have given a detailed description of the water closet and the section on the other side in the ladies' apartment, and now I understand you to state that these sworn statements were a mere expression of opinion, is that so, or isn't it?

772

A. No, that it isn't an expression of opinion. They
773 are given as facts.

R-X-Q. 127. And you are just as confident that that
ladies apartment was two berths long as you are that
there were partitions between the berths, and that the
upper berths were movable, ain't you?

A. I am confident that it was two sections long, and
that there were partitions between the berths?

R-X-Q. 128. And you are just as certain of one con-
struction as the other?

A. I must give the same answer, that it was two
774 sections long, and that there were partitions between
the berths.

JOHN W. WOOLFOLK.

4:15 P. M.—Adjourned till to-morrow at 10 A. M.

JO. LANE STERN,
Notary Public,
Special Examiner.

The foregoing depositions were duly taken, sworn to
and subscribed in my presence, at the time and place
775 therein mentioned. Given under my hand this 11th
day of June, 1881.

JO. LANE STERN,
Notary Public,
and Special Examiner.

JUNE 11, 1881.

Met pursuant to adjournment.

No witness appearing, a further adjournment was
had, subject to notice of counsel.

776 JO. LANE STERN,
Notary Public,
and Special Examiner.

IN THE
CIRCUIT COURT OF THE UNITED STATES, 777
FOR THE NORTHERN DISTRICT OF ILLINOIS.

GEORGE M. PULLMAN and PULLMAN'S
PALACE CAR COMPANY,

versus

THE NEW YORK CENTRAL SLEEPING
CAR CO., and WEBSTER WAGNER.

} *In Equity.*

778

Further testimony taken in behalf of the defendants, under the 67th Rule in Equity, as amended, at the city of Richmond, Virginia, before JO. LANE STERN, a Notary Public in and for the said city, and duly appointed by this Court a Special Examiner in the said cause.

RICHMOND, VA., June 23d, 1881, 11 A. M.

779

Present—C. K. OFFIELD, Esq., *for Complainants.*
H. T. MUNSON, Esq., *for Defendants.*

RICHARD ANDERSON, a witness produced on behalf of the defendants, being duly sworn, deposes and says, as follows :

Q. 1. What is your name, age, residence and occupation ?

A. Richard Anderson ; I am in my 59th year ; I live in Richmond ; I am a cook,

Q. 2. Were you ever employed by the Richmond, Fredericksburg and Potomac Railroad, if so, when did you work for it ? 780

A. Yes, sir ; I was, in January, 1838.

Q. 3. When did you leave the road ?

A. Between 1838 and 1845.

781 Q. 4. Then you went there in 1838 and left in 1845, is that what you mean ?

A. Yes, sir.

Q. 5. What kind of work did you do ?

A. I was employed cleaning cars at the yard, and sometimes ran on the road.

Q. 6. During this time that you were employed by said railroad, did it have a sleeping car upon it ?

A. Yes, sir ; it did.

Q. 7. Please describe it ?

A. The bottom berth opened like a book ; contained
782 two berths down at the bottom ; the middle berth was fastened to the back with hinges ; they raised it and that formed the middle berth ; the top berth was made the same way ; it fastened up to the roof of the car, and when it came down to form a berth, it rested on a cleat fastened to the partitions.

Q. 8. What do you mean by partitions ?

A. Partition such as was made so as to keep you from looking from one berth into the other.

Q. 9. What were the partitions made of ?

A. They were made of boards, sir.

783 Q. 10. How were these berths situated with respect to the long sides of the car ?

A. They were fastened to the side of the car.

Q. 11. Did the berths run the same way as the sides of the car, or the same way as the ends of the car ?

A. They ran the same way as the sides of the car.

Q. 12. Did the car have berths on one side or both sides of the aisle ?

A. On both sides of the aisle.

Q. 13. How many sections, each composed of a lower, a middle and upper berth, were there on each side of the
784 car ?

A. There were four on each side—four sections.

Q. 14. Did these partitions separate each set of bottom, middle and upper berths ?

A. Yes, sir.

Q. 15. How far did these board partitions extend up in the car ?

785

A. Up to the roof of the car.

Q. 16. How far down ?

A. To the floor.

Q. 17. How far did they come out into the car ?

A. Out to the aisle.

Q. 18. Did they go clear back to the side of the car ?

A. Yes, sir.

Q. 19. The part of the bottom berth that you say opened like a book, how was it supported when opened out ?

A. Supported by a leg to it, which rested on the floor, 786 like a leg to a chair.

Q. 20. Did that opened-out part of the lower berth have any partitions ?

A. Yes, sir. It had short boards that came up to the level of the middle berth.

Q. 21. When this opened out, part of the lower berth was turned back, what became of the short boards ?

A. They were taken and put in a box under the seat.

Q. 22. Won't you describe what made the middle berth again ?

A. The back of the bottom berth.

787

Q. 23. What was this back of the bottom berth hinged to, so that it could be raised to form the middle berth, as you have stated ?

A. It was hinged to the side of the car.

Q. 24. When it was raised up as a berth, what held it up ?

A. What we call a spring key.

Q. 25. What did the spring key go into ?

A. That went into the partition to hold the berth up—the berth partition.

Q. 26. Was the upper berth hinged to the side of the car ?

788

A. Yes, sir.

Q. 27. How was this upper berth fastened to the roof of the car ?

A. By hooks.

789 Q. 28. When it was fastened up, did it stand straight up and down or how?

A. It stood in a sloping way, in the way that the roof of the car was built.

A. 29. When it was hooked up and stood in this sloping way, was there a space behind it, or between it and the sides and the roof of the car?

A. Yes, sir.

Q. 30. When it was hooked up, could you poke things behind it, over its hooked-up edge?

A. No, sir; you could not.

790 Q. 31. Were there any cushions or mattresses in these berths?

A. Yes, sir.

Q. 32. The one for the upper berth, was it fast or loose?

A. It was loose.

Q. 33. The one for the middle berth, was it fast or loose?

A. That was fast.

791 Q. 34. And for the two parts of the lower berth, were the cushions fast or loose?

A. Both were loose.

Q. 35. Were there any pillows for these berths?

A. Yes, sir.

Q. 36. Any blankets?

A. Yes, sir.

Q. 37. Any sheets?

A. No, sir.

Q. 38. What kept the cushion or mattress of the upper berth from shaking out onto the floor?

A. A kind of box.

792 Q. 39. What was a kind of a box—do you mean the berth was a kind of a box?

A. The partition formed a kind of box to keep it from jostling out, and it was hooked up close to the ceiling.

Q. 40. When the upper berth was let down to sleep on,

was there anything to prevent the cushion or mattress slipping out onto the floor?

793

A. Yes, sir.

Q. 41. What was it?

A. We had to catch it to keep it from falling onto the floor, until it was fixed so as to make the bed.

Q. 42. Was there any ladies' apartment in this car?

A. Yes, sir.

Q. 43. Where was it?

A. In one end of the car.

Q. 44. What divided it from the gentlemen's apartment?

A. The partition with a sliding door.

794

Q. 45. Did you have to clean this car?

A. Yes, sir.

Q. 46. Did you ever ride in it?

A. Yes, sir.

Q. 47. When it was used as a sleeping car?

A. Yes, sir.

Q. 48. And when it was used as a day car, also?

A. Yes, sir.

Q. 49. Did you see persons using it to lie down in?

A. Yes, sir.

Q. 50. Was it a part of your duty when you went with the car to make it up to sleep in, and then to sit up in?

795

A. Yes, sir.

Q. 51. How came you to be sent out on the road with the car?

A. Often when the regular brakesman would be sick, I would go in his place.

Q. 52. Then you only went occasionally with this car—is that so?

A. Yes, sir.

Q. 53. Who was the conductor at that time?

796

A. Capt. Adams, the first of my going there.

Q. 54. Who was the next one you remember on that road?

A. Capt. Ben. Darracott.

Q. 55. What time did the train leave Richmond when
797 you went on with this car?

A. At eleven o'clock at night.

Q. 56. How far did it go?

A. To Fredericksburg.

Q. 57. What time did it get to Fredericksburg?

A. Between 4 and 5 o'clock.

Q. 58. What time did it start back?

A. Leave Fredericksburg to come back at eleven
o'clock in the morning, about.

Q. 59. It ran back as a day car, I suppose?

A. Yes, sir.

798 Q. 60. When you were first asked about this car, did
you remember it, and how it was made and worked.

A. Yes, sir; I did.

Q. 61. And do you remember the old car itself now?

A. Yes, sir, I do; as well as if it had been yesterday.

Q. 62. Please look at the model now shown you, De-
fendant's Exhibit "Richmond Car," and say whether
you ever saw a sleeping car, the sections of berths of
which were constructed like said model?

A. Yes, sir; I have.

Q. 63. Where?

799 A. On the Richmond, Fredericksburg and Potomac
Railroad.

Q. 64. Do you mean the one you have been testify-
ing about that was on the road?

A. Yes, sir.

Q. 65. And which was there sometime during your
employment, as you have stated?

A. Yes, sir.

800 Q. 66. I call your attention to the fact, that the back
part of the upper berth in this model is cut away or ex-
tends straight back from the sloping face or bottom of
that berth when in its raised position, as it is now ad-
justed—did that old car on the R. F. & P. R. R., have
any such construction?

A. No, sir. I didn't understand it at first.

Q. 67. Question repeated.

A. No, sir.

Q. 68. I call you attention to the fact, that the upper berth in this model is like a box, so that the mattress goes down into it to keep it in, was that so in the old car on the R. F. & P. R R. ? 801

A. Yes, sir.

Q. 69. I call your attention to the little boards marked "A," in this model, which I have placed at the ends of the opened lower berth; were little boards like those used in the old car you have testified about ?

A. Yes, sir; they were.

(The model was here removed.) 802

Q. 70. Was there any other sleeping car used on that railroad while you were there ?

A. Yes, sir.

Q. 71. What held its berths in place when it was slept on ?

A. Posts.

Q. 72. Were the berths arranged along the side of the car ?

A. Yes, sir.

Q. 73. How many berths were there above each other ? 803

A. There were only two berths to a section, a middle berth and a bottom berth.

Q. 74. Describe the middle berth ?

A. The middle berth was a board; they had to take it away when they were not using it.

Q. 75. Did it swing down to form the back of the seat or lower berth ?

A. No, sir.

Q. 76. Was there any berth near the top of the car ?

A. No, sir.

Q. 77. Wasn't there a shelf near the top of the car to put bundles on ? 804

A. Yes, sir.

Q. 78. Was this car used much ?

A. Yes, sir; it was used right smartly.

Q. 79. What became of these cars when they stopped
805 running night trains ?

A. They shoved them off on the outside tracks, down under the shed, and I don't know what became of them

Q. 80. Is Capt. Adams living ?

A. Indeed I couldn't say, for I have not seen him for some time.

Q. 81. Where is Capt. Darracot ?

A. He is dead.

Q. 82. Did you know Charles Jones, who sometimes ran on these sleeping cars ?

A. Yes, sir.

806 Q. 83. Where is he ?

A. The last time I heard from him he was at Atlanta, Ga.

1 P. M., Recess till 2 P. M.

2 P. M. resumed.

Cross-examination.

807 84 For whom are you cooking now ?

A. Dr. Glavis.

X-Q. 85 Were you a slave when you were working on the R. F. & P. Road, about forty years ago ?

A. Yes, sir.

X-Q. 86 Who owned you then ?

A. Mr. Darracott.

X-Q. 87 You went to work on the R. F. & P. Road the first year it was opened, did you ?

A. No, sir.

808 X-Q. 88 How long had the cars been running when you went to work there ?

A. That I don't know, sir.

X-Q. 89 For how many years did you work on the R. F. & P. Road ?

A. I worked there from January, '38 to '45.

X-Q. 90 How do you fix those dates, who helped you fix them?

809

A. I knew I was hired there in January, '38, and I came away in '45.

X-Q. 91. Where did you work after 1845?

A. On the Virginia Central Road.

X-Q. 92. What did you do there, and how long did you work there?

A. I worked there 12 months, ran as brakesman on the train.

X-Q. 93. Where did you next work, and for how long?

A. Richmond & Petersburg Railroad, two years.

X-Q. 94. Where did you next work, and for how long?

810

A. Went to cooking on the James River Canal, on the packet boat; I was there about eighteen months.

X-Q. 95. Have you ever worked on the R. F. & P. R. R., since 1845?

A. Yes, sir.

X-Q. 96. When, and for how long?

A. I don't know exactly what time it was, but it was about nine months that I worked there since.

X-Q. 97. What year?

A. I don't know exactly what year it was.

811

X-Q. 98. Before the war?

A. No, sir; since the war.

X-Q. 99. How long after the war?

A. About six years since the war as near as I can come at it.

X-Q. 100. What work did you do the last time on the R. F. & P. Road, the nine months?

A. Ran as a brakesman on the Danville connection.

X-Q. 101. Was there any sleeping car on the train you were brakesman on?

A. No, sir.

812

X-Q. 102. Who got you to come up here and tell this story you have told about these two old sleeping cars on the R. F. & P. R. R., about forty years ago?

A. Mr. Worden called my attention to know what I

813 knew about them, and I told him what I knew, and that I had worked with them.

X-Q. 103. Worden showed you a model, didn't he like this one you have been looking at?

A. He did not, sir, until I had told him what I knew about it.

X-Q. 104. And you and he agreed when you were asked whether you had seen the model, that you would say you hadn't, until after you had told him what you knew about it?

A. No, sir; nothing of the kind.

814 X-Q. 105. How many times have you seen Worden or he seen you about those old sleeping cars?

A. Only once.

X-Q. 106. When was that?

A. Last January.

X-Q. 107. Who else have you seen since about those old sleeping cars?

A. No one else.

X-Q. 108. And you haven't talked with any one since last January, about those old sleeping cars, have you, and no person whatever has talked to you?

A. No, sir.

815 X-Q. 109. Have you ever been arrested for anything?

A. No, sir.

X-Q. 110. You are just as certain that you have never been arrested, as you are about seeing a couple of old sleeping cars on the R. F. & P. Road, aren't you?

A. I am just as certain about never being arrested about anything, as I am alive sitting in this chair.

X-Q. 111. Those two old sleeping cars were running on the R. F. & P. Road, at the time you went there in January, 1838, were they?

A. Yes, sir.

816 X-Q. 112. And you are just as certain of that as that you are alive sitting in that chair.

A. Yes, sir.

X-Q. 113. These two old sleeping cars, as I under-

stand you, always ran together on the same train, so long as you knew anything about them, is that so?

817

A. Yes, sir.

X-Q. 114. You cleaned all the passenger cars on the R. F. & P. Road, between 1838 and 1845, didn't you?

A. Yes, sir; that was my business.

X-Q. 115. What kind of passenger cars did they have on the R. F. & P. Road, between 1838 and 1845, outside of these old sleeping cars?

A. They had cars with the cross seat very much the same style as they are now, except that they were not dressed and trimmed as they are now.

X-Q. 116. Then all the passenger cars on the R. F. & P. Road, between 1838 and 1845, had seats extending out from the wall of the car or cross seats, as you call them, just as the cars of to-day have them, except that they were not trimmed quite so nice, is that so, or what you mean to say?

818

A. Excusing of one coach, which had what we call bench seats, straight up and down the car.

X-Q. 117. But all the other passenger cars except the straight up and down bench car, between 1838 and 1845, on the R. F. & P. Road, had cross seats just like the cars of to-day, did they?

819

A. Yes, sir.

X-Q. 118. You never knew of but one passenger car with cushioned or bench seats running from end to end on each side of the car, on the R. F. & P. Road, between 1838 and 1845, did you?

A. No, sir.

X-Q. 119. Between 1838, and 1845, were the lamps of those old cars on the R. F. & P. Road, hung down from the ceiling over the aisle?

A. No, sir.

X-Q. 120. There were between 1838 and 1845, windows in all those old passenger cars along the sides, and at the ends of car like the windows in the cars of to-day, were there not?

820

A. Yes, sir.

821 X-Q. 121. And between 1838 and 1845 all those old passenger cars had water closets at each end of the car, on R. F. and P. Road, the same as the passenger cars of to-day, had they not?

A. No, sir.

X-Q. 122. There were no water closets at all in any of the passenger cars on the R. F. and P. Road between 1838 and 1845?

A. There were water closets in one end of them?

X-Q. 123. Did each of those old passenger cars on R. F. and P. Road between, 1838 and 1845 have a ladies' apartment in it?

822 A. Do you mean the sleepers?

X-Q. 124. No, I mean the passenger cars, not the sleeping cars?

A. Yes, sir; they had water closets in them; I thought he said ladies' car.

X-Q. 125. Did not each of the common passenger cars, not the two sleeping cars, have a ladies' apartment on the R. F. and P. Road, between 1838 and 1845?

A. Yes, sir.

X-Q. 126. Was this ladies' apartment formed by a partition running from the floor to the ceiling?

823 A. Yes, sir.

X-Q. 127. The water closet you have testified about in those old passenger cars, was in the gentlemen's apartment, was it not?

A. The one I have testified about was in the ladies' apartment.

X-Q. 128. Do you remember there being water closets in any of those cars on the R. F. and P. Road, between 1838 and 1845, except in one car?

A. Yes, sir.

824 X-Q. 129. There was a water closet then in only one of those passenger cars?

A. There was one water closet in each car.

X-Q. 130. The centre of each one of those passenger cars, between 1838 and 1845, was higher in the centre, like the passenger cars of to-day, is not that so?

A. I don't understand the meaning of that.

X-Q. 131. You know, do you not, that the passenger cars running on the road to-day, are higher at the centre than at the sides, and that you can see out of small openings at the top of the car? 825

A. Do I understand you to mean the ceiling of the car?

X-Q. 132. Yes.

A. Of course they are higher now than they were.

X-Q. 133. Yes, I know, the ceilings are higher in the passenger cars now, but the ceilings in those old passenger cars on the R. F. and P. Road, between 1838 and 1845, were just alike the ceiling of the passenger cars of to-day, is that not so? 826

A. Only to the raised top.

X-Q. 134. Some of those old R. F. & P. passenger cars between 1838 and '45 had a raised top, had they not?

A. No, sir.

X-Q. 135. Did the backs of those cross-seats on those old R. F. and P. cars between 1838 and '45, turn over or reverse?

A. No, sir; had to turn the car around.

X-Q. 136. How did you turn the car around? 827

A. At this end of the road we turned them around on a pivot, what you call a turn-table; at the upper end of the road at Acquia Creek, we turned around on a Y.

X-Q. 137. There was but one passenger train run on R. F. & P. R. R., between 1838 and '45, was there, and that one ran up at night and back in the morning?

A. There were two trains running in that time.

X-Q. 138. That is in 1838 there were two passenger trains running each day, and ran until 1845, is that it?

A. The two trains commenced running in 1841.

X-Q. 139. And both of these trains had sleeping cars on them, did they? 828

A. They had stopped running the sleeping cars then?

X-Q. 140. Then in the year 1841 there were no sleeping cars run on the R. F. and P. R., is that it?

A. Yes, sir; there was not.

829 X-Q. 141. You never knew of those sleeping cars being run between 1840 and the time you left there in 1845 ?

A. No, sir.

X-Q. 142. And you have never seen or known anything about those two old sleeping cars since the year 1840, have you ?

A. No, sir.

X-Q. 143. You recollect the construction of one of those old sleeping cars just as well as you do the other, which were run on that road before 1841 ?

830 A. Yes, sir.

X-Q. 144. How large was the ladies' apartment in each of those two old sleeping cars ?

A. There wasn't any ladies' apartment in but one of them.

X-Q. 145. Which one of the old sleeping cars was that ?

A. The one which had the side backs screwed to the car, three berths in a section.

X-Q. 146. And that was the one with posts ?

A. No, sir.

831 X-Q. 147 You know, as a matter of fact, don't you, that there never was but one old sleeping car on the road while you were there, and what do you mean by swearing there was two for ?

A. I don't know any such thing, sir.

X-Q. 148. Do you know that you are under oath, talking as you are now, or don't you think this doesn't amount to anything, and you might as well answer the way Worden expects you to ?

832 A. I know I am under oath ; I am answering just as correctly as I can ; the gentleman asks me a question and I don't intend to answer it any way but what is right.

X-Q. 149. But it has been so long ago, over 40 years, that you can't recollect how either of those sleeping

cars is constructed without thinking about the model, can you?

833

A. When I gave you a definition of it I didn't know there was a model in the world.

X-Q. 150. That is, you never saw this model until you came here to give your testimony?

Objected to as misleading, as the witness has already said that he saw a model last January.

A. No, sir.

X-Q. 151. Do you know William N. Bragg, of this city?

A. Yes, sir; I do.

X-Q. 152. Has he talked with you or you with him about either of those old sleeping cars on the R. F. & P. Road, between 1838 and 1845?

A. No, sir; not a word.

X-Q. 153. How large was the ladies' apartment?

A. It was just large enough to have a section of three berths, and water-closet and short seat in it.

X-Q. 154. You never saw the upper berths of that old sleeping car with the ladies' apartment and board partitions, in any other position except down for night use, did you?

A. No, sir; without it was when I had to take it down and clean and dust it.

X-Q. 155. That is you mean take it clear down, away from the side of the car?

A. No, sir; I don't mean that.

X-Q. 156. Don't you know that those board partitions, as you call them, in that old sleeping car, with the ladies' apartment, extended clear out to the aisle of the car, and there supported the outer ends of the berths?

836

A. The ladies' apartment? The bottom berth extended out to the aisle.

X-Q. 157. In the gentlemen's apartment, did not the

board partitions you have mentioned, extend out to the
837 aisle of the car?

A. No, sir; they did not, when the bottom berth was closed up.

X-Q. 158. The partitions in the gentlemens' apartment, at the ends of the berths were only about six or eight inches wide, were they?

A. I couldn't tell exactly the width of them.

X-Q. 159. Will you swear positively that any of the partitions separating the berths of that old sleeping car, except the board partition which formed the ladies' apartment, were over six inches wide?

838 A. No, sir; I wouldn't swear to that.

X-Q. 160. You don't recollect so as to swear whether those partitions were six inches or less wide, do you?

A. I wouldn't swear to that because I don't know the width of them.

X-Q. 161. It is your best recollection is it not, that all those partitions in that old sleeping car, except the one forming the ladies' apartment, was about six inches wide, isn't that so?

A. I couldn't swear to that, I couldn't say for a certainty whether it was six inches or more.

839

Adjourned at 5 o'clock, P. M., till 10 A. M. to-morrow.

10 A. M., June 24, 1881.

Resumed.

X-Q. 162. What was the color of the cushions of the
840 berths of that old sleeping car with the ladies apartment?

A. They were lead color.

X-Q. 163. The pillows were little round bolsters, were they not?

A. No, sir.

X-Q. 164. They were regular pillows with white pillow cases on them, were they? 841

A. They were regular pillows, but they used what they called brown slips on them.

X-Q. 165. How many times did you ever ride on either one of those old sleeping cars which you say you saw on the R. F. & P. Road, before 1841?

A. I couldn't tell that exactly, because I never took any particular notice of the times.

X-Q. 166. Was there anything hung down in front of that upper berth in that old sleeping car with the ladies' apartment, so that you couldn't see a person who got in there to sleep? 842

A. A curtain.

X-Q. 167. How far did the curtain hang down?

A. It hung down to the lower berth.

X-Q. 168. Are you certain it was a curtain?

A. Yes, sir.

X-Q. 169. Look at the model, and especially look at the part which I now shew you dropping down in front of the berth, and state if you do not recollect that the upper berth had an arrangement of this kind, dropping down in front of it, so as to hide the sleeper from the passengers? 843

A. They had a curtain.

X-Q. 170. Don't you know that there was a thin board hinged up to the ceiling of the car, just like that now shewn you on the model representing that car, and that when the passenger went to sleep in the upper berth he could drop this thin board down in front of him, so as to completely hide him, just as I am doing now, isn't that so?

A. They had a curtain there, sir.

X-Q. 171. Didn't they also have this thin board dropping down in front of the upper berth and hinged to the ceiling of the car, just as it is now in this model, which you have sworn represents that old car. Didn't that old 844

845 sleeping car have this dropping down board in front of the upper berth ?

A. They never used them ; they always used a curtain.

X-Q. 172. But there was a board hinged to the ceiling just as is on the model, which could be dropped down in front of the berth, so as to completely hide it instead of the curtain, wasn't there ?

A. Yes, sir ; but we always used the curtain.

846 The witness in answering the last four questions, has answered them while the model was in front of him with the hinged roof of the car let down in front of the upper berth, concealing it.

X-Q. 173. Can you read or write ?

A. No, sir.

847 X-Q. 174. There was also upon that old sleeping car with the ladies apartment, and connected with the window by a string, a square stiff piece of paper like a fan, so that the passengers could sit at the window when it was open, and hold this stiff piece of paper in front of them, so that the dust or cinders could not strike them in the face, and so they could look out, as shown in this model, and which I now hold in my hand, wasn't there ?

A. Yes, sir.

The thick piece of paper alluded to was the tag attached to the model by the Notary to identify it.

848 X-Q. 175. There was also, was there not, upon that old sleeping car with the ladies' apartment, a long foot stool, which could be placed in front of the lower seat or berth when used as a seat, so that the passengers could put there feet upon it in the daytime, and which could be taken away at night, just like the piece shown on this model, and which I now hold in my hand, wasn't there ?

A. No, sir.

X-Q. 176. But there was a long foot stool in front of the lower seats in that old sleeping car, something like the one shown on this model, and which you have sworn to, wasn't there? 849

A. No, sir; not like that.

X-Q. 177. What kind of a long footstool then was it in front of the lower berths in the day time?

A. I don't recollect of any.

X-Q. 178. You think, do you not, that the model which you have examined represents one of the sections of that old sleeping car, with the ladies' apartment, next to the end of the car? 850

A. Yes, sir.

X-Q. 179. That narrow partition six or eight inches wide, in that old sleeping car, I mean the one with the ladies' apartment in it, was right at and between the inside ends of the berths, so that the ends of the berths could rest on the keys or cleats fastened on that partition, when the berths were in position for night use. Is not that so?

A. Yes, sir.

X-Q. 180. There was nothing between these narrow partitions at the outer edge of the berths and the back side or wall of the car in that old ladies' apartment sleeping car, was there? 851

A. I don't recollect it if there was, sir.

X-Q. 181. In that old sleeping car which you say had no ladies' apartment, and which had posts running up to hold the berths in position in that car, the top shelf which you spoke of run clear from the wall of the car out to those posts and was fastened to those posts. Is not that so?

A. Yes, sir; that is so.

X-Q. 182. This top shelf which extended out and was fastened to the post was about twenty inches or two feet below the roof of the car, was it not? 852

A. I couldn't say for a certainty the distance.

853 X-Q. 183. Do you know how much a foot is, if so, state it ?

A. Twelve inches.

X-Q. 184. When you first began to recollect about those old sleeping cars on the R. F. & P. Road, you couldn't recollect distinctly but one car, could you ?

A. What do you mean, one sleeping car ?

X-Q. 185. Yes, that's what I mean.

A. Yes, sir ; I recollected both.

854 X-Q. 186. Yes, you recollect both now ; but last winter when Worden spoke to you and showed you the model, you did not then recollect distinctly, but one old sleeping car on the R. F. & P. Road, isn't that so ?

A. No, sir.

X-Q. 187. Don't you know that in both of those old sleeping cars on the R. F. and P. Road, that the upper berths or shelves in both of those cars extended directly out from the walls of the cars to the posts, and were there securely fastened and could not be moved ; and that the passengers in both of those old sleeping cars used those top berths or shelves, in both cars, to store away their umbrellas and bundles and small parcels in ? Now to be honest about it, isn't that so ?

855 A. No, sir.

X-Q. 188. I see you are quite lame and have great difficulty to get around, how long have you been that way ?

A. About eighteen years.

X-Q. 189. You were a small boy when you first went to clean cars on the R. F. and P. Road, weren't you ?

A. No, sir ; I was not very small.

856 X-Q. 190. How long were those hooks which hung down from the ceiling and held up those upper berths in the ladies' apartment sleeping car ?

A. Don't recollect exactly, between an inch and a half and two inches long, I suppose.

X-Q. 191. There were rafters forming the roof of that old ladies' apartment, sleeping car, upon which the roof was nailed, were there not ?

A. Yes, sir.

X-Q. 192. Did those upper berths or shelves in that ladies' apartment sleeping car, come within twenty inches of those rafters when they were hooked up ? 857

A. You mean when they were hooked up to the ceiling ?

X-Q. 193. Yes.

A. Yes, sir.

X-Q. 193½. How near did those upper berths come to the rafters when they were hooked up as you say ?

A. They came up touching of it, the rafters.

X-Q. 194. If Capt. Adams who ran that old sleeping car with the ladies' apartment were to tell you that you were mistaken about the upper berths being movable and hooked up to the ceiling, you would believe him, would you not ? 858

A. No, sir.

X-Q. 195. No, sir, what ?

A. No sir, I would not.

X-Q. 196. How much did Worden promise to pay you for coming up here and telling this narrative about these old sleeping cars ?

A. He never has promised to pay me anything at all, sir. 859

X-Q. 197. You don't expect to get a cent, do you, for telling this story ?

A. No sir ; I do not.

X-Q. 198. You came up here of your own accord, did you ?

A. No, sir ; I came to stand my witness, as I was called on.

Re-direct-examination by Mr. MUNSON—

1 P. M. adjourned to 2 P. M.

860

2 P. M. resumed.

- 861 R-D-Q. 199. Did you mean to say that there was a hinged board like this roof piece that swung down in the car to shut a person up in the upper berth?

Objected to as a plain attempt to induce the witness to alter and retract a sworn statement already made in this record.

A. No, sir; I didn't mean that.

- 862 When this question was asked the part of the roof of the model which is hinged, so that you can put it in a box was swung down vertically.

R-D-Q. 200. Then all that you remember in that old sleeping car, that went up in front of the berths, was the curtain. Is that so?

Last objection repeated.

- 863 A. Yes, sir.

R-D-Q. 201. Did you mean to say that you remembered in that old sleeping car a piece of paper like a fan hitched to the window by a string like this (indicating the tag)?

Last objection repeated.

A. No, sir; I didn't mean to say that.

R-D-Q. 202. Was there any such thing there?

- 864 Last objection repeated.

A. I don't remember of seeing it.

R-D-Q. 203. Was there any hole or open space between the front edge of the partitions in that old car, and the

side of the car, so that you could look from one berth into another?

A. No, sir.

865

R-D-Q. 204. About that old sleeping car which was three berths high, and had a ladies' apartment in it, this gentleman (opposite counsel) asked you a question which makes you say that the partitions between the berths were little narrow ones, standing way out at the front edge of the berths, with a space or opening behind them towards the side of the car, was there any such thing in the old car?

Last objection repeated.

866

A. No, sir I didn't mean that.

R-D-Q. 205. How far did the partitions that ran up to the top of the car between the berths come out into the car?

A. They came out to the edge of the berth.

Re cross-examination :

R-X-Q. 206. In that old sleeping car with the ladies' apartment, the reason why you think you couldn't see through from one berth into another was because there was a curtain extending from this narrow partition to the side of the car, isn't that so? 867

A. No, sir.

R-X-Q. 207 There was a curtain there, wasn't there?

A. No, sir.

R-X-Q. 208. There was no curtain around the berths of that car, was there—the car with the ladies' apartment?

A. Yes, sir, there were curtains in front of the berths.

R-X-Q. 209. And those curtains hung down in front of those berths all the time, didn't they? 868

A. No, sir; they did not.

R-X-Q. 210. Were you ever a porter or had anything to do with the old Woodruff sleeping car.

869 Objected to as incompetent and inadmissible as not proper re-cross-examination.

A. Woodruff sleeping car. I don't understand.

his
RICHARD X ANDERSON.
mark.

Witness
JO. LANE STERN.

870 Adjourned to 10 A. M. to-morrow.

Saturday, 10 A. M., June 25, 1881.

No witness appearing, adjourned till Monday, 12 M.

Monday, June 27, 12 M.

871 Adjourned on account of sickness of witness until to-morrow at 10 A. M.

Tuesday, June 28, 1881, 10 A. M.

Met pursuant to adjournment.

872 CHARLES W. COLEMAN, next witness produced on behalf of the defendants, being sworn, duly deposes and says as follows :

Q. 1. Please state your name, age, residence and occupation?

A. Charles W. Coleman, 70 years of age, Hanover County. Farming now, sir.

Q. 2. Were you ever connected with the Richmond Fredericksburg and Potomac Rail Road Company?

873

A. Yes.

Q. 3. From when and to when?

A. From 1835 or '36 until April, 1849. I don't know whether I went there in '35 or '36.

Q. 4. What was the nature of your employment with that road?

A. I had various employments. At one time I superintended getting timber on the road. That was the first thing I did. After that I was freight agent in the depot. After that I was road-master from South Anna Bridge to Fredericksburg.

874

Q. 5. While you were in the employ of that rail road did it at any time run sleeping cars for the accommodation of its passengers?

A. It did.

Q. 6. Did you ever ride in a sleeping car on that road during the time you were in its employ?

A. Frequently.

Q. 7. Will you please describe the construction of that sleeping car?

A. It had three berths. The lower berth was fixed, a sort of a double berth, you know, then it was turned over so as to make a single seat for a day car, that is an ordinary seat. The middle berth, that was turned down to make a back to sit in; and the upper berth was hooked up to the top of the car with a hook. And I think there were curtains all down before the berths.

875

Q. 8. Were there any more than this one set of three berths in the car?

A. What do you mean by "more than one set"?

Q. 9. How many berths were there in the car?

A. I couldn't say how many berths there were. There were three sets on each side of the car. I mean by that three longitudinal sets up and down the car.

876

Q. 10. Do you mean arranged against the car sides, so that there was an aisle or a passage way from one end of the car to the other?

A. Certainly there was.

877 Q. 11. Could a person in one berth look into the next berth beyond him, and see a person in the next berth?

A. I don't think they could.

Q. 12. You have described three berths—a lower berth, a middle berth and an upper berth arranged longitudinally against the car sides. These three berths I will call a section of berths. Was there anything to divide one section of berths from the next adjacent section?

A. What do you mean by that? Anything to divide the lower berth from the middle berth, and the middle berth from the upper one?

878 Q. 13. I mean when the berths were to be slept in was there anything to divide each lower, middle and upper berth from the next lower, middle and upper berth?

A. Yes, I think there was a partition between them, so that a person lying down couldn't see into the next one.

Q. 14. Did the partition go from the floor to the roof between these berths?

879 A. I think the partition went all the way up between the berths.

Q. 15. How far did these partitions extend out into the car?

A. What do you mean by extending "out into the car"? I don't know what you mean by it.

Q. 16. I mean when the upper berth was lowered down, and the middle berth was raised up to be slept on, with the partitions standing between them so as to separate one set of berths from the set next to it, whether or not these partitions extended out into the car as far as the berths?

880 A. I think they extended out as far as the berths went.

Q. 17. You say the middle berth formed a back to sit in, what did it form the back of?

A. Back of the bottom seat. What I mean is, that

the lower berth made a seat in the day time, and the middle berth let down and made the back to it.

Q. 18. How long did this sleeping car run on this road? 881

A. I think it ran two or three years—from 1839 to 1841. It may have started in 1838.

Q. 19. Did these berths have cushions or mattresses?

A. I don't know what they had. I think they had mattresses, cushions or something. I don't recollect—it has been so long. Something to make them comfortable. I don't know exactly what it was.

Q. 20. Did they have anything like a pillow to rest the head upon?

A. I don't recollect whether they did or not. 882

Q. 21. How was it you had occasion to use this sleeping car?

A. I used to come down very frequently on Saturday evenings from the other end of the road. I used to make it a habit to come down to see my mother, who lived at North Anna Bridge. I would stay up there till night and come down. Sometimes I would be up there until night, and I would wait and come down in the sleeping car. There was no other way to come.

Q. 22. Did you ever go back in this sleeping car when it was arranged as a day car to be set up in? 883

A. Yes, sir.

Q. 23. Which of its berths did you use when you rode in it as a sleeping car?

A. I generally got in the top berth; generally. I didn't always do it.

Q. 24. Do you remember any circumstance that causes you to recollect frequently using the upper berth?

A. I recollect once the conductor asked me what made me get in the upper berth, and I told him it was because I thought I would be more out of the way of "snakeheads"; the road was in bad condition, and the iron would have to run through two people before it got to me. Then they had scrap iron and stringers. 884

Q. 25. I understand a "snakehead" upon the old

885 rail roads having strap rails, the ends of which were beveled off to lap past each other, was formed when the loose end of one of these rails struck the car wheel, and was thus forced up into the car. Am I right?

A. That's right; yes.

Q. 26. Who was the conductor you refer to?

A. I think it was Quesenberry.

Q. 27. Where is he?

A. He is dead.

886 Q. 28. How was the middle berth which swung down to form the back of the seat, and the upper berth which you say was swung up and hooked to the top of the car, connected to the side of the car, so that it could swing?

A. The middle berth was just turned down so as to form the back of the seat, and the upper one was turned up so as to be out of the way of a man's head. That's what I remember about it. I don't know how it was fastened.

Q. 29. Did you ever see a sleeping car constructed like the model (defendants' Exhibit, "Richmond Car") now show you; if so, where?

887 A. That's very much like the car I have been describing.

Q. 30. I swing the back of the seat up to a horizontal position, and down against the side of the car as a back, is that the way you remember the middle berth in that old car to have worked?

A. Yes, that's the way.

Q. 31. I let the upper berth down to a horizontal position, and swing it up to the car roof, and fasten it in an inclined position. Do you remember that the upper berth in the old car that you have described worked in the same way?

888

Objected to as leading.

A. Pretty much in the same way as well as I can recollect.

Q. 32. Do you remember in the old car partitions at the ends of the berths as in this model ?

889

Objected to as leading and suggestive.

A. Yes, I think like that.

Q. 33. When the lower berth was turned out into the aisle of the car beyond the upright partitions, do you remember whether or not there were any little boards used like those (marked "A") I now set up at the ends of the front part of the lower berth ?

Same objection.

890

A. I think I do remember them.

The further examination of this witness, on account of death in his family, is adjourned until Thursday morning at 9.30.

Thursday, 9.30 A. M., resumed.

Cross-examination.

891

X-Q. 34. You had seen the model before going on the stand, had you not, and who showed it to you ?

A. That model ? Yes, I saw it. I don't know whether it was William N. Bragg or Mr. Worden, one or the other showed it to me.

X-Q. 35. You had talked with both Worden and Bragg about the old sleeping car, had you not ?

A. I don't think I had any conversation with anyone except Mr. Worden.

892

X-Q. 36. That model represents a section of the sleeping car next to the end of the sleeping car, does it not ?

A. I think it does.

X-Q. 37. You had forgotten about the construction

of the inside of that old sleeping car to a very great extent until you talked to Worden, had you not ?

893 A. No, sir; I had not.

X-Q. 38. Didn't the model refresh your recollection as to the construction of that old sleeping car ?

A. Yes, it did refresh my recollection.

X-Q. 39. And if it had not been for the model you could not have recollected the car as you have, could you ?

A. I don't think I could have recollected it as particularly as I have done ; but I recollected the old car anyway.

894 X-Q. 40. In the description of the old car you have given you have attempted to describe the model, have you not ?

A. I described the car before I ever saw the model, or before I talked with anyone.

X-Q. 41. You made an affidavit for Worden some time ago, when you and he talked about that car, didn't you ?

A. Yes, I did.

X-Q. 42. There were car seats in one end of that old car which ran crosswise the car were there not ?

895 A. I don't recollect anything of that kind. All the seats were longitudinal as well as I recollect.

X-Q. 43. Don't you recollect that only one half of that car had berths in it, and that the other half had cross seats for the passengers to sit up and ride in ?

A. No, sir, I don't think it did. Both sides had berths.

X-Q. 44. I mean half of the car from end to end ; don't you know that one half of that car had cross-seats in it for passengers to sit up and ride in, if they didn't want to lie down ?

896 A. No, don't think it did.

X-Q. 45. Don't you know that in one half of that car there were no berths at all, but cross seats instead ?

A. No, sir ; I don't.

X-Q. 46. Will you swear positively that over half of that car did not have cross seats in it ?

A. To the best of my recollection I will. That is all I can swear to—the best of my recollection.

897

X-Q. 47. Have you any distinct recollection, whether or not, one half of that car had cross seats in it instead of berths ?

A. I can't say that my recollection is very distinct, but that is my best recollection that there were no cross-seats.

X-Q. 48. Is that your recollection or impression after this length of time ?

A. That's my recollection.

898

X-Q. 49. How far did you ever ride in that old sleeping car at any one time ?

A. About thirty-two miles.

X-Q. 50. Was there a ladies' apartment in that old sleeping car ?

A. I don't know that there was.

X-Q. 51. Did you ever see those upper berths in that old sleeping car in any other position than that to be slept in ?

A. Yes.

X-Q. 52. What other position ?

899

A. Swung up to the roof of the car, hooked up.

X-Q. 53. Passengers put their bundles and satchels in that upper berth, after it was hooked up, didn't they ?

A. I don't know whether they did or not.

X-Q. 54. How did the passengers put their bundles and satchels in the upper berth after it was hooked up ?

A. I don't know anything about that.

X-Q. 55. They could put their baggage and satchels right over into the berth so as to keep them safe, after the berths was hooked up, couldn't they ?

A. I don't know whether they could or not.

900

X-Q. 56. Don't you know that those upper berths when hooked up, hung far enough down from the ceiling, so that the passengers could store away their small baggage in the berths ?

A. No, I do not.

901 X-Q. 57. You don't recollect about that do you?

A. No, I do not.

X-Q. 58. There were posts running from the floor to the ceiling at the inside corners of those berths to hold them up, were they not?

A. I don't recollect anything about the posts.

X-Q. 59. Will you swear positively there were three berths one over another in that old sleeping car?

A. Yes, I will swear to that.

X-Q. 60. You swear to it, because you saw it in the model, don't you?

902 A. No, I swear to it, because I saw them, and slept in them, I don't know how many times.

X-Q. 61. Were there any water closets in that old sleeping car?

A. I don't recollect whether there was or not.

X-Q. 62. How long was it after 1841, before you saw any other sleeping car on the R. F. and P. Road.

A. I don't know that I ever saw another one at all; except this same sleeping car, I may have seen that.

X-Q. 63. And there never was but one old sleeping car on the R. F. and P. Road, while you were there,
903 between 1836 and 1849?

A. I couldn't say positively.

X-Q. 64. But you have no recollection of any other old sleeping car on that road, between those dates.

A. No, I don't recollect any.

X-Q. 65. Did that old sleeping car have a raised roof like the passenger cars of to-day?

A. No; there weren't any raised roofs in those days at all.

X-Q. 66. When were you freight agent, and at what station on the R. F. & P. Road?
904

A. I was freight agent here in the city of Richmond soon after the road started, I reckon six months after. My health got bad, and I left.

X-Q. 67. The road started in 1836, did it?

A. That's my impression.

X Q. 68. Where did you go after you left the road as freight agent at Richmond, and what did you do? 905

A. I went home and staid there one month, and then I went as road-master on the road.

X Q. 69. How long were you then road-master on the R. F. & P. Road?

A. From that time until April, 1849. I was there about twelve years, I think.

X Q. 70. What distance of road did you look after during the first five years you were road-master?

A. Sometimes one distance, sometimes another, but most of the time from Fredericksburg to South Anna Bridge, say 40 miles. 906

C. W. COLEMAN.

VIRGINIA, }
City of Richmond, } to wit:

I, JO. LANE STERN, a Notary Public for the city aforesaid in said State, do hereby certify that the foregoing depositions were duly taken, sworn to and subscribed in my presence at the time and place therein mentioned. 907

Given under my hand, this 30th day of June, 1881.

JO. LANE STERN, *Notary Public,*
Special Examiner.

The further taking of testimony in this case is adjourned over until Thursday, July 7, 1881, at 12 A. M.

JO. LANE STERN, 908
Special Examiner.

909

IN THE CIRCUIT COURT OF THE UNITED
STATES,

FOR THE NORTHERN DISTRICT OF ILLINOIS.

910	<p>GEORGE M. PULLMAN AND PULL- MAN'S PALACE CAR COMPANY, <i>Plaintiffs.</i></p> <p style="text-align: center;"><i>versus</i></p> <p>THE NEW YORK CENTRAL SLEEPING CAR Co., AND WEBSTER WAGNER. <i>Defendants.</i></p>	}	<p><i>In Equity.</i></p>
-----	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---	--------------------------

911 Further testimony taken on behalf of the defendants under the 67th Rule in Equity as amended at Richmond City, State of Virginia, before Jo. Lane Stern a Notary Public for the city aforesaid, and special examiner in this case, on Thursday, July 7, 1881.

THURSDAY, July 7, 1881, 10 A. M.

No witness appearing the, taking of this testimony is adjourned to Monday, July 11, 1881.

MONDAY, July 11, 1881.

912

Adjourned on account of sickness of witness until to-morrow.

Tuesday, adjourned on account of continued sickness of witness until to-morrow.

WEDNESDAY, July 13, 1881.

Met pursuant to adjournment.

913

Present:—C. K. Offield, Esq., counsel for complainants,
H. T. Munson and M. B. Philipp, counsel for defend-
ants.

S. W. WORDEN, witness introduced on behalf of de-
fendants, being duly sworn, deposes and says as fol-
lows:

Q. 1. State your name, age, residence and occupation?

A. Stephen W. Worden; age, 66; Albany, N. Y.; car
builder.

914

Q. 2. When did you first work at that trade, and
where?

A. Yorkville, N. Y. I went there in '32.

Q. 3. Where did you first work after that, if any
where?

A. Hoboken, New Jersey.

Q. 4. How long did you work there at that trade?

A. About a year.

Q. 5. Where next did you work at that trade, if at
all?

A. In Richmond, Virginia.

915

Q. 6. For whom did you work first at Richmond,
Virginia?

A. James Boshier.

Q. 7. What work did you first do for James Boshier,
at Richmond?

A. Building four-wheel passenger cars.

Q. 8. What other work did you do for him?

A. Built what we called extension top chariottee
bodies, and open coach bodies.

Q. 9. How many passenger cars did you assist in
building for him while in his employ?

916

A. Seven.

Q. 10. What became of these passenger cars, if you
know?

A. They went on the Richmond, Fredericksburg &
Potomac Railroad?

- Q. 11. Were these cars all the same size?
 A. They were not.
- 917 Q. 12. About what were the dimensions of the largest with respect to the body?
 A. About forty-two feet in length, and nine feet in width.
- Q. 13. How many of these seven cars were of these dimensions?
 A. Two.
- Q. 14. Where did you next work at your trade after you left the employment of James Bosher?
 A. For the Richmond, Fredericksburg & Potomac Railroad Company.
- 918 Q. 05. When did you enter the employ of that company; how long did you remain in its employ; and what position did you occupy during that period of time?
 A. In April, 1837. I remained until February, 1840. It is termed foreman of the carpenter shop.
- Q. 16. While you were in the employ of the R. F. & P. R. R. Co. state whether or not you fitted up or helped to fit up one of the passenger cars of that company as a sleeping car?
 A. I did.
- 919 Q. 17. When did you do this, as nearly as you can recollect?
 A. In 1839.
- Q. 18. State how you came to do this?
 A. At the request of John H. Hopkins, who was then superintendent of the company.
- Q. 19. What did he ask you to do in this matter?
 A. To fit up the car in such a manner that it would furnish berths or places to lie down for as many as it would seat.
- Q. 20. When did this sleeping car begin running on the road of the R. F. & P. R. R. Co., as nearly as you can recollect, for carrying passengers?
 A. Early in the fall of '39.
- Q. 21. How long did it run on that road for carrying passengers, of your own personal knowledge?

A. Until February, 1840, when I left the employ of the company.

Q. 22. State whether or not during this period of time you ever rode and slept in it while it was on the road? 921

A. During the Fall of 39 I both rode and slept on it, and in February, 1840, I rode to Fredericksburg in the same car; myself and family.

Q. 23. Please describe the construction and operation of the devices of that sleeping car, giving the dimensions of that car and these devices as nearly as you can now recollect them?

A. I have given the outside dimensions once. About forty-two feet in length and about nine feet in width, from out to out. On the inside, about forty-one feet in length, eight feet in width about six feet six next the wall of the car, and about seven feet in the centre in height. The car was divided into two separate apartments; a ladies' apartment in one end, the balance of the opposite end from the ladies' apartment for a gentlemen's apartment. Each side of the centre of the passage-way there was a series of sections of berths, five in length and three in height, arranged one above the other, in one section. Each section was separated from the adjoining section by a panel partition extending from the floor to the roof of the car, extending from the wall of the car towards the central passage-way about twenty inches. The first or bottom section of berth was composed of two platforms or frames; the outer one adjoining the wall of the car about twenty inches in width; the one nearest the central passage way some inch and a half or two inches narrower than the first named, and was attached by its outer edge to the inner edge of the first platform mentioned by butt hinges, the one adjoining the wall of the car attached to the wall of the car in like manner by hinges. The first named platform was supported on its aisle edge by a plank standing longitudinally upon the floor—raising vertically about eight inches from the floor, forming a support for the aisle edge of the platform attached to the wall of the car. The section next 922 923 924

the central passage-way, when resting in a horizontal position, had legs attached to its underside by hinges, one end of which would drop down in the floor on eyes to receive them, and thus form a support for the aisle edge of that section of berth. This section of berth when resting horizontally, had a removable piece attached to the aisle edge of the partition by hooks and eyes, and to the end of that section of seat by pins entering eyes attached to the seat, in this manner extending the partition to the aisle edge of this bottom berth, separating it from the next adjoining berth. On these platforms or frames forming the bottom berth there were placed removable mattresses or cushions. When not in use for sleeping purposes these mattresses were removed, the aisle section of the berth was turned on its hinges over and rested on the top of the outer section of berth; the two together then could be raised by their aisle edge to gain access to a box formed beneath it by this vertical piece in front, extending from the floor, the wall of the car on the opposite side of the partition at each end giving access for the purpose of stowing away bedding, pillows or those removable head boards when they were not in use for sleeping purposes. This platform, when resting in its proper position, one upon the top of the other, formed a set, and having one of the mattresses or cushions placed on it, was in condition for day use.

There was a middle section of berth hinged at its wall edge, and when raised to a horizontal position passed up and over springs placed near the aisle edge of these partitions, and formed a rest for the berth. On the top side of this berth, fastened to it, was a mattress or cushion. This berth, when to be used as a day car, dropped down to a vertical position, and formed a back to the seat beneath it. This middle section, and also the wall section of the berths beneath it, were about twenty inches wide.

There was a top or upper berth that was about two feet in width, hinged to the wall of the car by strap hinges. This berth was tray formed. On the top of

it, when resting in a horizontal position, was placed a mattress, this top or upper berth resting on blocks fastened near the aisle edge of the partitions. This berth, 929^a when not in use for sleeping purposes, could be turned up towards the roof of the car, passing by a ledge piece extending about four inches below the carlines and flush with the front of the partitions and fastened to them, also the carlines. This berth was held in this position, about forty-five degrees, by a bolt in the centre of the aisle edge of the berth, catching into a hasp on this ledge piece. There was a hook fastened near each end of this berth to the ledge piece to catch in eyes in the aisle bottom edge of the berth. This berth, when held in this position, there was a recess formed behind it, by 930 the roof above it, the partition at each end, for the storage of mattress, pillows, and such light articles. These berths were about six feet in length. When they were all placed in position for night use, from the floor to the top of the first section of berth was about eleven inches; from the top of this first section to the top of the middle section was about twenty-six inches; from the top of this middle section to the top of the top section, about twenty-four inches; from the top of this top section, next the wall of the car, was about seventeen inches to the carlines, the under side of them. At the 931 front edge of the partitions, from the berth to the under side of the carlines, was about twenty inches, and from the underside of this ledge piece to the berth about sixteen inches.

Q. 24. State how the upper section or top berth was constructed on its under side, near the wall of the car?

A. When it was resting in this inclined position, at an angle of about forty-five degrees, the wall edge of the berth was beveled off, forming a right angle with the wall of the car. 932

Q. 25. Where was this top berth hinged to the side of the car—at its upper or lower edge adjoining the wall of the car?

A. At its upper edge.

Adjourned at 1 to 2 P. M.

2 P. M., Resumed.

933 Q. 26. What was the purpose of beveling off the lower wall edge of the top berths of this sleeping car?

A. My object in doing it was to obstruct the light in the window less, be out of the way of heads, and give a better appearance to the inside of the car.

Q. 27. How was the ladies' apartment separated from the gentlemen's in this car, if at all?

A. By a permanent partition extending from side to side, and from the floor to the roof of the car.

Q. 28. Was there or not a door in this partition?

934 A. There was a door in the centre of the passage-way.

Q. 29. What was in the ladies' apartment of this sleeping car, if anything?

A. On one side there were berths the same as in the section of the gentlemen's apartment I have just described. On the opposite side next the partition was a water-closet; between that and the end of the car was a series of short berths, the same as on the opposite side, only being shorter.

935 Q. 30. You have stated that there was a recess formed behind the top berth by the roof above it and the partitions at each end; state whether or not the wall of the car to which this berth was hinged had anything to do with forming this recess?

A. It formed one side of it.

Q. 31. Was what you call the middle section of berth, or middle berth, hinged to the wall of the car at its upper or lower wall edge, when raised horizontally?

A. Lower.

936 Q. 32. You have described the lower or bottom berth as made of two platforms; was the platform that was hinged to the wall of the car, so hinged at its upper or lower wall side edge?

A. Upper.

Q. 33. When the second or narrower of these two platforms was extended out so as to form a lower berth, were the hinges joining these two platforms at their upper or lower edges?

A. At their upper edges.

Q. 34. State whether or not the removable piece which you say was attached by hooks and eyes and pins to the partition, is the same device as what you term removable head-boards? 937

A. It is the same.

Q. 35. In your answer to Q. 23 you have described the construction and operation of one set of the five sections of berths, which you say was on each side of the passage-way of the gentlemen's apartment; state whether or not each of the series of berths in each section was the same in construction and operation as what you have described in that answer?

938

A. They were.

Q. 36. Whether or not the hinges used to connect each top berth with the wall of the car were made specially for that purpose?

A. They were.

Q. 37. Were there any other means in that sleeping car, except the permanent partition, for separating the ladies' and gentlemen's apartment when desired, if so, what were the means?

A. There was in case of necessity a curtain to be drawn across, cutting off one section on each side of the passage from the other sections. 939

Q. 38. Sections next to the ladies' apartment or otherwise?

A. Sections next to the ladies' apartment.

Q. 39. Was there any stove or place for a stove in this sleeping car, and if so, where was it located?

A. The opposite end of the car from the ladies' apartment.

Q. 40. Was it in the middle of that end or at one side?

A. One side.

940

Q. 41. Was there anything opposite it at that end?

A. There was. A short seat.

Q. 42. Whether or not this short seat opposite the stove had cushions on the back and seat?

A. It did.

Q. 43. Whether or not these berths that you have described ran lengthwise or crosswise of this car?

941 A. Lengthwise.

Q. 44. How did the ledge piece depending from the roof extend; lengthwise or crosswise of the car?

A. Lengthwise.

Q. 45. Whether or not the sleeping car that you fitted up as a sleeping car was one of the two passenger cars that you helped to make when you were in the employ of James Bosher, and the dimensions of which you gave in answer to Q. 12?

A. It was.

942 Q. 46. You say that you slept in this sleeping car during the fall of 1839; which berth, if you recollect, did you sleep in; the bottom, middle or top one of any of the sections?

A. The top berth.

Q. 47. Where was the car running, if at all, when you so slept in the top berth?

A. It was on its way from Fredericksburg to Richmond.

Q. 48. After examining the model, Defendants' Exhibit "Richmond Car" in this case, state, if you know what it represents?

943 A. It represents one section of the sleeping car I have been describing.

Q. 49. State whether or not said Defendants' Exhibit "Richmond Car" represents with substantial correctness, the series of three berths with the partitions and headboards, and the construction and operation of those berths and devices of one section of the said sleeping car, which you have described, as it was completed and run on the R. F. & P. R. R.?

A. It is substantially the same.

944 Q. 50. I notice that the roof of this model Defendants' Exhibit "Richmond Car" is divided and hinged so that it can drop down, how was it in the sleeping car?

A. It was not cut off and hinged in the car.

Q. 51. Why was it cut off and hinged in the model?

A. For convenience in packing.

Q. 52. I notice that a portion of the floor in this model is cut so that it can be removed, how was it in the sleeping car? 945

A. It was not so. It was whole.

Q. 53. Why was the model made in this respect as it is?

A. So that I could pack it in a much smaller box than if it had been whole.

Q. 54. Who made this model, and at whose request?

A. I made it at the request of Mr. Philipp.

Q. 55. For him?

A. For him.

946

Adjourned till to-morrow at 8:30 A. M.

THURSDAY, July 14—8:30 A. M.

Resumed.

Present—C. K. OFFIELD, Esq., counsel for complainants; H. T. MUNSON and M. B. PHILIPP, counsel for defendants.

Q. 56. You have stated, in answer to question 23, that the top or upper berth was tray form; why was this so constructed? 947

A. To give it more strength, and to retain the cushions from falling out when in a horizontal position, and to retain them better even when turned up.

Q. 57. After examining Defendants' Exhibit "Booth's Bill" state, if you know, who wrote the memorandum that appears on the face of that bill as follows: "Ordered for the berth coach. S. W. Worden."?

A. That is my way of certifying bills, and that is my handwriting. 948

Q. 58. State when, to the best of your recollection, you wrote that memorandum—that is, whether it was after or before you left the employ of the R. F. & P. R. R. in February, '40?

A. It was either the last of December, '39, or first of January, 1840.

949 Q. 59. State what berth coach you referred to when you made that memorandum?

A. I referred to the one I have previously described in this deposition.

Q. 60. State whether or not the articles referred to in that bill were used in the sleeping car you have described before you made that memorandum?

A. They were.

950 Q. 61. Please examine the receipted bill now handed you, which reads as follows: "October 26, 1839. The R. F. & P. R. R. Co. to S. W. Worden, Dr. For making linings to bottom seats to berth car, \$1.50. Received payment. S. W. Worden." In whose handwriting, if you know, is that bill and receipt?

A. Mine.

Q. 62. When was the whole of that bill and receipt written by you, if you recollect?

A. On or about the date that it bears on the head of it.

951 The bill and receipt referred to is offered in evidence on behalf of the defendants, and the same is marked Defendants' Exhibit "Worden Bill."

J. L. S., N. P., Sp. Ex.

Objected to by counsel for complainants as incompetent and irrelevant.

Q. 63. What berth car did you refer to when you wrote that bill and receipt?

A. The one referred to in this deposition.

952 Q. 64. Who did the work referred to in that bill?

A. My wife.

Q. 65. What was the purpose of the linings for the bottom seats of this sleeping car, referred to in this bill?

A. It was a covering for the mattress used for the seat when in use as a day car.

953

Complainants' counsel desires to make the same statement, accompanied with the same request, as made to defendants' counsel yesterday at the noon adjournment, namely : that it had been the intention of Mr. E. N. Dickerson, one of complainants' counsel, of New York, to appear and attend on the cross-examination of this witness; that Mr. Dickerson has telegraphed that he is in the middle of a case or cases which will occupy his time until the 29th instant, and that it is impossible for him to cross-examine this witness until after that day, and Mr. Dickerson requests that the cross-examination of this witness may be reserved until some date subsequent to the 29th inst., and on behalf of Mr. Dickerson, as well as on behalf of complainants' attending counsel, this request is now made upon the record.

954

Counsel for defendants, in reply, say that they were notified just before the beginning of the taking of defendants' testimony by the counsel of the complainants here present that all arrangements must be made with him, and notices served on him for taking testimony as to prior uses or inventions.

955

They made their arrangements with this in view, putting aside all other business, in order to take the testimony of this witness and others in the South, deeming it advisable to take his testimony here and at the present time.

956

They had no intimation until yesterday, and after the witness had been examined.

957

at some length, that Mr. Dickerson desired to cross-examine him. They then agreed to reserve the cross-examination of the witness long enough to enable Mr. Dickerson to get here at once.

958

It would inconvenience and embarrass them in the conduct of the case greatly to reserve the witness until after the 29th inst. for cross-examination by another counsel than the one now present for the complainants, and, therefore, in view of the circumstances of the case, decline to so hold him.

959

Complainants' counsel states that if it had been possible Mr. Dickerson would have attended and conducted the cross-examination at the present time; that it appears from the sworn deposition of this witness that he is a resident of Albany, New York; that it will probably not be controverted by the defendants that this witness is in their employ and entirely at their service; and that, in view of these facts, complainants' counsel again requests that the cross-examination of this witness be reserved, to be conducted by Mr. Dickerson as requested; and that any inconvenience to the defendants arising by such postponement will be obviated by the complainants, if possible, when so suggested.

960

That it is true that complainants' counsel present has charge of the examination of witnesses in this branch of the case, and that the reserve cross-examination now suggested is the only exception complainants' counsel now knows in the examination of defendants' witnesses

as to prior use; and, in view of the above facts, the request is again repeated.

961

Defendants' counsel reply that they greatly regret that they cannot comply with the request of Mr. Dickerson and the counsel for the complainants here present, and must again decline to hold the witness as desired.

CROSS-EXAMINATION.

X-Q. 66. You say you are a car builder. When and for whom was the last car of any kind you ever did any work on? 962

A. In 1873 or '4.

X-Q. 67. How long have you been in Richmond this last time, or in its immediate vicinity?

A. About the 5th or 6th of May, with the exception of four or five days.

X-Q. 68. What have you been doing here over the last two months?

A. Not much of anything.

X-Q. 69. What have you been trying to do?

963

A. When names were given me of persons who were supposed to have knowledge of this sleeping car referred to in my deposition, if so, what they knew about it, and have them state what they knew about it.

X-Q. 70. Who has been giving you names for over two months for this purpose?

A. Captain Chandler has given me names. Mr. Coleman, Mr. Woolfolk May; also Mr. Bragg, and there may be others whose names I don't recall at the present time.

X-Q. 71. All of these individuals you have mentioned are the same parties who have been up here, and have given their depositions, and are attempting to help you swear through that old sleeping car like your model, are they not? 964

A. To my own knowledge I don't know that they have given depositions.

965 X-Q. 72. You were present when Bragg was giving his deposition, weren't you?

A. I was present when he commenced.

X-Q. 73. When was the next time you were in Richmond prior to the 5th of May last, or its immediate vicinity?

A. On or about June 1, 1881.

X-Q. 74. What I asked! you was when you were in Richmond the last time, before May of this year?

A. Part of February and March, according to my recollection.

966 X-Q. 75. Who has been paying your expenses and bills since the 5th of last May?

A. They haven't been paid. That is, I have not received pay.

X-Q. 76. Who is going to pay your expenses and bills since you came to Richmond the 5th of last May?

A. I can't say that there is any positive understanding about it.

X-Q. 77. Well, what was the understanding such as it was; or are you paying your bills here for fun?

967 A. I have paid about half of my expenses out of my own funds, the balance I have borrowed.

X-Q. 78. How much money did you borrow and who of?

A. In all \$250.

X-Q. 79. Who of?

A. Webster Wagner.

X-Q. 80. Are you paid by the day or by the month for your services by these defendants?

A. The bargain that I made last fall when I came here was that I should be paid by the day. Since then there has been no understanding.

968 X-Q. 81. How much were you paid by the day last fall when you came here. What was the bargain?

A. Ten dollars a day.

X-Q. 82. How long were you here in Richmond last February and March, or its immediate vicinity?

A. About thirty-five days. 969

X-Q. 83. You were here then solely in February and March, for the purpose of hunting up parties who could be induced to recollect an old sleeping car like your model, on the R. F. & P. Road over forty years ago. Isn't that so?

A. I was here for the purpose if I could find persons that recollected that sleeping car, and what knowledge they had of it.

X-Q. 84. When was the last time that you were in Richmond or its immediate vicinity prior to February and March last? 970

A. On this business.

X-Q. 85. On the business of trying to hunt up witnesses who recollected an old sleeping car like your model?

A. I think it was in 1876.

X-Q. 86. Were you not here last Fall in September October and November for the purpose of inducing witnesses to give affidavits that they had seen a sleeping car something like your model on the R., F. & P. Road over forty years ago? 971

A. I was here a part of October and November, according to my recollection.

X-Q. 87. How long were you here in Richmond for that purpose, or its vicinity, last October and November?

A. I think about three weeks.

X-Q. 88. Your ten dollars a day for services began at that time, didn't it, last October?

A. For the time that I was engaged.

X-Q. 89. When were you last in Richmond prior to last October for any purpose? 972

A. It wasn't later than 1877.

X-Q. 90. In your work that you have been doing for these defendants since last October, you have worked Sundays as well as work days, haven't you?

A. Not that I am aware of.

X-Q. 91. You haven't done any work, then, exhibiting

your model and talking to witnesses on Sunday in Richmond or its vicinity that you are aware of?

973 A. I may have talked to some witnesses on Sunday but I made no charge for Sundays.

X-Q. 92. This man, W. N. Bragg, who first went on the stand, has been helping you all he can, hasn't he, trying to get witnesses to recollect that that old sleeping car was like your model?

A. He has been helping me some.

X-Q. 93. Is he to get ten dollars a day for his services?

A. I don't know that he is to get anything.

974 X-Q. 94. No, but he has told you that he is to get or expects ten dollars a day?

Objected to as incompetent, irrelevant and immaterial.

A. He has not.

X-Q. 95. The combined effort and result of you and Bragg under your ten dollars a day exertions, has been to induce two Africans and three fellows from Caroline County to come on the stand and attempt to swear that
975 that they did see something like your model on the R., F. & P. Road about forty years ago. Isn't that so?

Objected to as grossly insulting, and as incompetent, irrelevant and immaterial.

A. My own knowledge. I don't know of but one man who has been on the witness stand.

X-Q. 96. You mean from your own knowledge, I suppose, when you were personally present?

A. Neither have I been informed who had been on the
976 witness stand.

X-Q. 97. You have left money in the hands of some of those different parties to come here and testify, and you have seen them after they have testified, haven't you?

A. I never gave them money to come here and testify

I may have seen them after they had been here, or I supposed they had been here, but they didn't give me any information about it. 977

X-Q. 98. And you never gave any of them any money?

A. I never gave them any money to come here and testify.

X-Q. 99. No, of course not; but what did you give them money for?

A. Pay expenses to come here, and I may have given it to them to pay expenses while here and return.

X-Q. 100. You have seen a very large number of persons who recollected the old sleeping car on the R., F. & P. Road during the time you were there, since you began your efforts in that direction last Fall? 978

A. I don't know what you would call a very large number.

X-Q. 101. Well, what do you call a very large number, as applied to those you have seen as to their recollection?

A. All told, I may have interviewed as much as twenty.

X-Q. 102. And probably as many as fifty?

A. I spoke within bounds when I put it at twenty. That is it what I meant, that it didn't exceed twenty.

X-Q. 103. Mention the names of those parties whom you have seen, aside from those witnesses who have given testimony? 979

A. Since when?

X-Q. 104. Since you went into that business.

A. Sam. Lecter, Petersburg; Charles Jones, of Augusta, Ga.; Theophilus Lawther, Wilmington, N. C.; Ivory P. Hodgdon, James Coghill, both of Richmond; John J. Pendleton, Warner Lindsay, W. N. Bragg, Henry Deane, James Coleman—I believe that is his name—Woolfolk (I don't recollect his name), Chandler, Robert P. Davis, — Tucker, at Covington; Maddux, Fredericksburg. That's all the names I recollect at present. 980
I recall one name at Fredericksburg, and that's all I do recollect, Scott.

X-Q. 105. But there are a number of persons whose

names you do not recollect, isn't that so, colored persons, for instance?

981 A. I believe there is one I didn't mention: Richard Anderson.

X-Q. 106. How long did you stay in Richmond the last time you were here prior to the Fall of 1880? In 1876 or 1877?

A. I kept no account of it in my mind, but I reckon not exceeding two weeks.

X-Q. 107. You were then in the employ of the defendants, were you not, and trying to hunt up witnesses who recollected that old sleeping car like your model?

982 A. I was in the employ of the defendants for the purpose of finding those who recollected that sleeping car which was constructed under my supervision.

X-Q. 108. When was the last time you were in Richmond prior to 1876 or '7?

A. At this moment I am unable to answer. I was down here a number of times prior to coming down here on sleeping car business. I should have to refer to my papers.

X-Q. 109. The defendants are to reimburse you for all monies you pay out, your bills and expenses, in addition to this ten dollars per diem, are they not?

983 A. That was the understanding.

X-Q. 110. What employment did you follow between your engagement for these defendants in 1876 or '7, and the date of your returning to Richmond, last October?

A. Some two years and a half I have been working for Webster Wagner, repair shops.

X-Q. 111. What work did you do in the repair shops?

A. General repairing, such as is done in the paint shops; take a car and strip it.

X-Q. 112. For whom did you work before you went
984 to work for Webster Wagner, some two years and a half ago, and for how long?

A. Since when. In the mechanical business I had no steady employment.

X-Q. 113. How long was it before you went to work for Wagner that you had no steady employment?

A. Some year and a half, or two years, possibly.

X-Q. 114. What was the last steady employment you did have, and for whom, before you went to work for Wagner? 985

A. J. M. Jones, car building.

X-Q. 115. How long did you work there?

A. Some six or nine months.

X-Q. 116. How much did M. E. Jones pay you a day?

A. Two dollars and a half.

X-Q. 117. How much did Webster Wagner pay you a day as an employee?

A. Until a year ago last spring one dollar and eighty-five cents. 986

X-Q. 118. Since that, as an employee in the shops?

A. Two dollars a day.

X-Q. 119. Who did you work for, and for how long before you worked for J. M. Jones?

A. It was a stock company at Schenectady, N. Y. I don't remember the name; the firm burst up in about six months.

X-Q. 120. How much wages did you get a day while there?

A. Three dollars and a half, with the understanding that my wages were to be raised. 987

X-Q. 121. For whom and how long did you work immediately before the bursted up Schenectady firm?

A. I worked with P. K. Deadrick, Albany, N. Y., three or four years.

X-Q. 122. How much did he pay you a day?

A. Two dollars and a half.

X-Q. 123. For whom did you work immediately prior to your working for Deadrick, and for how long?

A. Three or four months for, I think, the Vermont Central Railroad, St. Albans, Vt. 988

X-Q. 124. For whom did you work prior to the railroad company at St. Albans, and for how long?

A. I think it was about a year for the New York Central Railroad, West Albany.

X-Q. 125. How much did that road pay you a day?

A. Two dollars and a half.

989 X-Q. 126. For whom and how long did you work immediately preceding the New York Central employment?

A. I think about a year with a man by the name of Frank Gilbert, Green Island, N. Y., six miles from Albany.

X-Q. 127. What wages did he pay you?

A. Three dollars and a half per day.

X-Q. 128. For whom and for how long did you work immediately prior to your work for Gilbert?

990 A. I think what work I did was for myself. That was in '67 to '68.

X-Q. 129. How many times did you visit Richmond, Virginia, from the time of your leaving in 1840 and the year 1876?

A. Some eight or ten times exclusive of when I lived here in this State.

X-Q. 130. Did you live in this State after February, 1840?

A. I did.

X-Q. 131. When and where?

991 A. From April, 1867, to some time in the fore part of the winter of 1868, at Little Westham, some eight miles above the city, north side of the "James."

X-Q. 132. For whom did you work during that time?

A. Myself.

X-Q. 133. Exclusive of the time you have lived in this State since 1840, what business did you have for visiting Richmond?

A. I came down to purchase land, moving down to this State, and then in connection with the brake cases.

X-Q. 134. What do you mean by the brake cases?

992 A. Looking for persons who would be knowing of my putting on a device which has since been known as the Stevens brake, double-acting brake.

X-Q. 135. When and where did you put on such a brake?

Objected to as not proper cross-examin-

ation and as incompetent, irrelevant and immaterial.

993

A. On the R. F. & P. Road, in 1838.

X-Q. 136. You worked for the R. F. & P. Road in 1838, didn't you?

A. I did.

X-Q. 137. For how long?

A. From April, 1837, till February, 1840.

X-Q. 138. Those two cars that you have described, one of them as being changed into a sleeping car, each had this double acting brake on it like the Stevens brake, did they not?

994

Same objection as to X-Q. 135.

A. The one that I changed into a sleeping car had it on. The other one was disabled and not running.

X-Q. 139. Disabled, when?

A. Sometime during the summer of 1838.

X-Q. 140. What years was it you worked for James Boshier, and built those seven cars?

A. 1835 and 1836.

X-Q. 141. How long were those five short coaches you built at Boshier's?

995

A. About sixteen feet.

Adjourned at 1.30 P. M., till 8.30 A. M., to-morrow.

Met pursuant to adjournment, Friday, July 15, 1881, 8.30 A. M.

Present :—Counsel as before.

996

X-Q. 142. Were those seven passenger cars built by James Boshier in 1835 or '6 the first passenger cars built for the R. F. & P. Road?

A. The first that I built.

X-Q. 143. Were there other passenger cars running

on the R. F. & P. Road, at the time James Bosher built those seven?

997 A. Not to my knowledge.

X-Q. 144. Did James Bosher ever build any other passenger cars, except the seven you have described, between the time you went in his employ in 1835, and the time you left the employ of the Road in February, 1840?

A. Not that I know of.

X-Q. 145. Were there any other passenger cars run on the R. F. & P. Road prior to the time of your leaving that road in February 1840, except these seven cars you have described, being built by James Bosher?

998 A. I have no knowledge of any others.

X-Q. 146. The R. F. & P. Road never built any cars while you were in their employ, did they?

A. I built one for them, one passenger car.

X-Q. 147. Is that the car you have described?

A. It is not.

X-Q. 148. When did you build a car for the R. F. & P. Road?

A. I think it was in the early part of '39.

X-Q. 149. What kind of a car was that? Give its dimensions.

999 A. It was about forty-two feet in length, nine feet in width; It was about six feet six in the clear between the floor and the carlines, next the wall of the car.

X-Q. 150. Did this car run on the R. F. & P. Road that you built in 1839, before you left the Road?

A. As far as Hanover Junction.

X-Q. 151. How wide were those sixteen feet long coaches built at Bosher's for the R. F. & P. Road?

A. To the best of my recollection they were about seven feet and a half from out to out.

1000 X-Q. 152. Where did you get in and out of those sixteen foot coaches?

A. At the sides.

X-Q. 153. Both sides, or just one side?

A. Either side.

X-Q. 154. Did you put the Stevens brake on either one of those coaches?

1001

Objected to as incompetent, irrelevant and immaterial.

A. I put a brake on which has since been called the Stevens' brake.

X-Q. 155. On this sixteen foot coaches did you?

Same objections.

A. I did.

X-Q. 156. Were those two long coaches built at Boshers for the R. F. & P. Road, constructed exactly alike?

1002

A. They were.

X-Q. 157. How were the seats in those two long Boshers coaches arranged?

A. I didn't built the seats.

X-Q. 158. And you don't know how they were built and arranged in the coaches, do you?

A. I didn't know anything about them until after I went to work for the company.

1003

X-Q. 159. Then those two long coaches built at Boshers, one of which you say you afterward changed to a sleeping car, were never seen by you until you went to work for the R. F. & P. Road in 1837. Is that it?

A. Yes. I saw them after they were running on the road.

X-Q. 160. But you had never seen the inside of them, so you could tell how they were constructed, before you went into the employ of the road?

A. No.

1004

X-Q. 161. You have sworn in your direct examination that while you were in the employ of James Boshers you helped build seven passenger coaches; that two of those coaches were about forty-two feet long; that you afterwards went to work for the R. F. & P. Road, and

1005 changed one of those coaches into a sleeping car; you now swear positively that you never saw either of those two coaches except upon the track, and never saw the inside of them until you went to work for the company—which of those two sworn statements is true, if either of them?

A. I can't see that there is any conflict in the statements. I did not go inside of them, to my recollection, after they left the shop, until I went to work for the company in 1837.

1006 X-Q. 162. How were the seats arranged in those two passenger coaches built at Bosher's, as you say, when you saw them on the R. F. & P. Road when you went into its employ in 1837?

A. Longitudinally.

X-Q. 163. That is, there was a seat run along each side of the car from end to end, and no other seats in the car, is that it?

A. I meant the seats ran crosswise of the car.

X-Q. 164. And that new car that you built in 1839, the seats ran crosswise in that car, didn't they?

A. They did.

1007 X-Q. 165. Those seats in all three of those long cars—the two built at Bosher's and the one built by you—had reversible backs, did they not?

A. They did not.

X-Q. 166. Where was the aisle or passageway in those three forty-two feet cars on the R. F. & P. Road before you left it in 1840?

A. Lengthwise in the centre of the car.

X-Q. 167. Did you build any ladies' apartment in those two cars you built at Bosher's before you went into the employ of the R. F. & P. Road?

A. I did not.

1008 X-Q. 168. Did you build any water-closets in those cars?

A. When?

X-Q. 169. At Bosher's?

A. Did not.

X-Q. 170. How high above the top of the rails was the bottom of these two Boshers cars?

A. It must have been three feet three or four inches. 1009

X-Q. 171. You say one of those long Boshers cars was disabled in 1838 and did not run afterwards on the road to your knowledge. Is that correct?

Objected to, as the witness has made no such statement.

A. Not for passengers, to my knowledge.

X-Q. 172. How was it disabled, and what did it run for?

A. Do I understand that question: how came it to be disabled? 1010

X-Q. 173. Yes; what was the matter with it?

A. It had been thrown off the trucks down an embankment and had wrecked the body very much; stove some of the panels, broke a number of the pillars or posts on one side of the car.

X-Q. 174. And the seats were taken out of it, and it was used for a freight or baggage car, was it?

A. I only recollect its being used once. The seats were taken out. 1011

X-Q. 175. You built this other car to take its place, did you?

A. I don't know whether it took its place or not—that is, I don't know whether that car had ever run on what was called the Louisa Road. The car I built, I understood, was for the purpose of running on the R. F. & P. Road to the junction and then up the Louisa Road.

X-Q. 176. Do you mean to state that while you were in the employ of the R. F. & P. Road any passenger car ever ran up on the R. F. & P. Road to Hanover Junction and then off on the Louisa Road? 1012

A. Ran on the R. F. & P. Road to the junction of the Louisa Road, then up that road as far as it was finished.

X-Q. 177. Where did the other passenger coaches on

the R. F. & P. Road run while you were in its employ?

1013 A. The two eight-wheel cars ran between the cities of Richmond and Fredericksburg.

X-Q. 178. Where did the five four-wheel cars run?

A. They were run with the "accommodation" or freights almost exclusively. I never saw them with the eight-wheel or large cars on the regular trains; what was left of them, which was not more than three or four at most.

X-Q. 179. The regular train consisted of one long passenger car, an engine and baggage car, didn't it, while you were in the employ of the road?

1014 A. On the Louisa Road. On the Fredericksburg (R. F. & P.) they usually ran two long passenger coaches.

X-Q. 180. Did you ever see more than three long passenger coaches on the R. F. & P. Road while you were in its employ?

A. I did not, exclusive of the disabled one.

X-Q. 181. Where did that other long passenger coach come from aside from the two built at Boshers and aside from the two you swore you built on the R. F. & P. Road?

1015 A. In my own knowledge, I don't know. I understood it was built in the company shops previous to the time that I built those two long ones for James Boshers.

X-Q. 182. Then there was a long passenger coach running on the R. F. & P. Road at the time you went into its employ other than the two built by James Boshers, was there?

A. There was one standing on the track at the company's office.

X-Q. 183. How long, how wide and how high was that passenger coach?

1016 A. I think it was about thirty-two feet in length; not more than eight feet wide; about the same height as the two I built. I think I took my pattern from that in height.

X-Q. 184. Did that thirty-two-foot long car run on the R. F. & P. Road after you went into its employ?

A. It did a portion of the time.

X-Q. 185. What portion of the time?

A. I couldn't say; I only noticed it occasionally. 1017

X-Q. 186. How did you get in and out of that thirty-two-foot car?

A. At the ends.

X-Q. 187. How were the seats arranged in that car?

A. Crosswise, except in the ladies' apartment, after I put the partition across.

X-Q. 188. When did you put a partition across that thirty-two-foot car to make a ladies' apartment?

A. In '37 or '8.

X-Q. 189. Did you build a ladies' apartment in that long car which you built in 1839? 1018

A. The one I built in the company's shops?

X-Q. 190. Yes.

A. I did.

X-Q. 191. Give the dimensions of that ladies' apartment in that car?

A. Measuring lengthwise of the car, not much difference from six feet and the width of the car.

X-Q. 192. You say there was no ladies' apartment in either of those forty-two-foot cars built at Bosher's at the time you went into the employ of the R. F. & P. Road? 1019

A. There was not.

X-Q. 193. And you put no ladies' apartment in that car in which you built sleeping berths until you made the berths themselves, did you?

A. Yes, I did.

X-Q. 194. How long was it before you put in the berths that you built in the ladies' apartment in that car?

A. But a short time.

X-Q. 195. Well, how long, about? 1020

A. It may have been three months.

X-Q. 196. Give the dimensions of the ladies' apartment in that car in which you afterwards put berths?

A. Not much difference of six feet in length and the width of the car.

1021 X-Q. 197. What kind of seats did you put in that ladie's apartment of the car in which you afterwards put berths?

A. Run lengthwise against the side of the car on one side; on the opposite side there was a very small water-closet, and a short seat between that and the end of the car, lengthwise also.

X-Q. 198. During the time you were in the employ of the R. F. & P. Road, during what hours did the passenger trains run between Richmond and Fredericksburg?

1022 A. They would leave Richmond about four or five o'clock in the morning, return before dark, from '37 to '39. That's my recollection; from '39 till I left, they would leave Richmond about five in the evening, return early next morning.

X-Q. 199. There was just one train for passengers which ran up and back each day while you were there, was there?

A. One what we called passenger and mail train.

1023 X-Q. 200. How long did it take the passenger train to run between Richmond and Fredericksburg, and Fredericksburg and Richmond, while you were in the employ of the road?

A. Four or five hours each way.

X-Q. 201. What was the distance of the road between those two cities?

A. I understood it was sixty miles from Richmond to Fredericksburg.

X-Q. 202. At what date did you put that double acting Stevens' brake on that Boshier car in which you afterwards put bunks?

1024 Objected to as incompetent, irrelevant and immaterial.

A. Some time early in 1838.

X-Q. 203. By what means were those double acting brakes applied which you put on the car, and in which you afterwards built bunks?

Same objection.

A. Brakes were applied by a windlass on the front edge of each platform. 1025

X-Q. 204. What kind of brakes were on that Boshier car in which you afterwards placed bunks prior to the double acting Stevens' brake?

Same objection.

A. There was what we called a single brake at one end of the car.

X-Q. 205. By whose direction did you put on the double acting brake? 1026

Same objection.

A. No one directed me.

X-Q. 206. By whose direction did you put in those bunks in that old car?

Objected to as already answered.

A. I had no definite direction the manner to arrange them further than so they could be folded out of the way of the passengers' heads, etc., in the daytime, which directions were given me by John H. Hopkins. 1027

X-Q. 207. Had you ever seen bunks or berths in any kind of a railroad car prior to that date?

A. No.

X-Q. 208. Mr. John Hopkins didn't describe what to put in there at all to you, did he?

A. Nothing further than he wanted me to arrange it so that as many persons could lie down as that space or section would seat. 1028

X-Q. 209. As what section, who said anything about sections, you or John Hopkins?

A. I am not certain that he used the word "section," but something equivalent.

X-Q. 210. Did John Hopkins tell you how much of that car to fit up with berths?

1029 A. He did not.

X-Q. 211. Did he tell you to put three berths, one over the other?

A. He did not.

X-Q. 212. He gave you no instructions, did he, except to put in as many berths as would accommodate as many people as could ride in the car?

A. It amounts to that, all the instruction he gave me.

X-Q. 213. Did any person else give you any instruction how to build the bunks in that car?

A. Did not.

1030 X-Q. 214. You had never heard, had you, of the construction of a car with sleeping bunks or berths in it before you put in those bunks?

A. I had not.

X-Q. 215. Mr. John Hopkins told you to put berths in that car like a steamboat or a canal boat, didn't he?

A. He did not.

X-Q. 216. How many people could ride comfortably in one of those sections, as you say you built it, in that berth car?

1031 A. I calculated there could four.

X-Q. 217. There were no cross seats anywhere in that car after you had put in the bunks, were there?

A. There was not.

X-Q. 218. Who helped you put in the bunks in that car?

1032 A. Ivory P. Hodgdon, a man by the name of Powell, I don't recollect his given name, James Coghill, Robert P. Davis, John Pendleton, and there may have been others that worked there, but I don't recollect, hands at the shop, that worked on the construction of that arrangement for berths.

X-Q. 219. You know, do you not, that each one of these parties you have mentioned, Coghill, Davis and Pendleton, have all of them stated under oath, that this car that you are swearing about and attempting to describe, and which they worked upon, had no partitions

in it, and that the upper berths were fixed and immovable?

1033

Objected to as incompetent, irrelevant and immaterial.

A. All I know about it, Coghill and Pendleton, when they informed me they had given another party the affidavit, that if it was anything different from the one they gave me, that they did not know it, and it was false.

X-Q. 220. But at the same time you were afraid to put either Pendleton or Davis or Coghill on the stand to back up this narrative you are telling here, ain't you? 1034

Objected to, as the witness is not conducting the defence of this case and has nothing to do about putting witnesses on the stand; and the insinuation in the question is entirely unwarranted. The question is objected to further as incompetent, irrelevant and immaterial.

A. I have no control of the matter; neither have I advised one way or the other in the cases of those persons named. 1035

X-Q. 221. You have seen Mr. Davis lately and talked to him, haven't you.

A. I have.

X-Q. 222. Mr. Pendleton lives right up here on Broad Street, doesn't he?

A. He does.

X-Q. 223. Were the windows in all three of those forty-two foot cars on the R. F. & P. Road alike?

A. If there was any difference I didn't know it. 1036

X-Q. 224. Just give the movements you went through with to change that Boshier car into a berth coach.

A. The first thing was to run what they call a belt the length of the space I calculated to occupy with berths, which was fastened to the pillars near the top

- of the bottom sash when they were raised up. I then
 1037 had panel partitions, extending from the floor to the
 roof of the car, and from the wall of the car extending
 towards the central passageway about twenty inches.
 I placed one of those partitions at the intersection of
 each section or length of berths, and one at the furthest
 end of the berths from the ladies' apartment. In each
 one of these sections I hinged a frame or platform to
 the wall of the car by its upper outside edge. To the
 front edge, or the edge nearest the central passage-way
 of the first named platform, I hinged another platform
 of nearly equal width. The edge of the first-named
 1038 platform was supported near the central passageway
 by a plank extending vertically from the floor to the
 bottom of the platform, supporting it in a horizontal
 position. The section of platform nearest the central
 passageway had legs hinged to the platform in such
 manner that when resting in a horizontal position drop-
 ped down and rested upon the floor in eyes fastened
 there for that purpose. These platforms, when thus
 arranged as berths, had a removable piece at the inter-
 section of each series of bottom berths that could be
 attached to the aisle edge of the partition by
 1039 pins and eyes, and extend towards the aisle to
 the aisle edge of the platform or berth, which
 piece, when the berths were not used for sleeping
 purposes, could be removed and stored beneath the
 platform attached to the wall of the car by raising it on
 its hinges, gaining access to the box or trunk beneath
 it that was formed by the plank supporting the platform
 or berth on one side, the wall of the car on the opposite
 side, the partition at each end of the berth, and the
 berth above it. This removable piece above mentioned
 was attached near the aisle end corner of the aisle berth
 1040 or platform by an eye on the platform and a pin on each
 side of the headboard or removable piece. This aisle
 platform, when to be arranged for a day car, was turned
 upwards and outwards towards the wall of the car, and
 rested upon the top side of the platform attached to the
 wall of the car. While in this position, by placing a

removable mattress or cushion, it was in readiness for day use.

About thirty-five inches from the floor there was another frame attached to the wall of the car by its bottom outside or wall corner by butt hinges, the same as the platform beneath it, which platform, when suspended in a vertical position, formed the back of the seat beneath it. When to be used as a sleeping berth, could be raised on its hinges, passing over springs attached near the front edge of the partition, which springs would spring out from the surface of the partitions and form a shoulder on their top ends, to form a support for the berth when resting in a horizontal position. 1041

From the top of this middle berth there was an upper or top berth hinged at its upper outside corner to a belt attached to the wall of the car, by strap hinges attached to the berth on its bottom wall edge. This berth was about two feet in width, and on or about six feet in length, made in tray form for the purpose of retaining the mattress or whatever else might be placed upon its upper surface. This berth, when resting in a horizontal position, placing on its top surface a mattress and pillow, was ready for use as a berth to sleep in. This berth, when the car was used for day purposes, its aisle edge could be turned up towards the roof of the car, at an angle of about forty-five degrees, passing by a ledge piece extending down from the roof about four inches below the carlines, and flush with the bottom aisle edge of the berth. This berth was held in this position of about forty-five degrees by a bolt on its bottom aisle edge, catching in an eye or similar device attached to this ledge piece immediately above it. Near each end of this berth there was a hook attached to this ledge piece for the purpose of entering eyes on the bottom aisle corner of the berth, as an extra precaution against its falling. This berth, when resting in its inclined position and the partitions at each end of it, the wall of the car on one side, the roof of the car above it, formed a recess in which to store mattresses, pillows, bedding and other light articles. 1042 1043 1044

X-Q. 225. You built the partitions in that car before
 1045 you put in the berths, didn't you?

A. I did.

X-Q. 226. What was the size of the windows in that
 car?

A. It's mere guess work; some twenty to twenty-two
 inches one way, and about two feet in height.

X-Q. 227. How high was the bottom sills of these
 windows from the floor of the car?

A. About 32 inches.

X-Q. 228. And how far was the top of the windows
 from the ceiling of the car?

1046 A. About 22 inches.

X-Q. 229. How many windows were there in each
 section?

A. There was about equal to three windows.

X-Q. 230. What do you mean by that?

A. I mean that they were not uniform; the partitions
 did not always come against the pillars or posts be-
 tween the windows.

X-Q. 231. The partitions would then sometimes come
 right in front of the windows?

1047 A. I recollect that some of them did not come against
 the post, but don't recollect that any of them ever in-
 terfered with the "lifter" which is in the top centre of
 the sash.

X-Q. 232. Don't you know very well that there was
 not a place in that car where the berths covered ex-
 actly three windows, the way you have got it in this
 model?

A. Yes. I don't believe they did, couldn't; if one
 had they all would.

1048 X-Q. 233. The windows in that car before it was
 changed was one window to each passenger seat, was it
 not?

A. The seats were placed without any regard to the
 windows.

X-Q. 234. And the windows in that car in which you
 afterwards put bunks, were arranged in the same man-

ner as the windows shown in this model, so far as the windows were concerned?

A. In height, substantially the same, but not in width.

X-Q. 235. Then the model doesn't represent the windows in that car, so far as the arrangement of the windows themselves are concerned?

A. Lengthwise with the berths they do not.

X-Q. 236. But the windows in that old car in which you afterwards put bunks, were close together, and only separated by a pillar, as shown in the model, were they not?

A. There was only a pillar separating the windows.

X-Q. 237. How thick were the partitions you have talked about between the bunks? 1050

A. I think they were about an inch and a half.

X-Q. 238. Tongue and grooved, were they?

A. For the reception of the panels they were.

X-Q. 239. How high was this plank which came up from the floor, upon which the seat rested, forming one side of the box?

A. Some seven or eight inches.

X-Q. 240. How far was this plank away from the wall of the car?

A. About eighteen inches from the wall of the car to the side next the aisle. 1051

X-Q. 241. How thick was this plank?

A. About an inch and a quarter.

X-Q. 242. Did this plank stand perpendicularly upon the floor or was it inclined?

A. Perpendicularly, according to my recollection.

X-Q. 243. How was this double platform constructed which doubled up and formed the seat?

A. It was hinged to the wall of the car by butt hinges. It was near six feet in length, twenty inches in width, something like an inch and three quarters thick. It was covered over on the under side by a board, on the top side there were thin spring slats running crosswise the frame, and each end resting on the frame. The platform next the central aisle the same length as the first 1052

- 1053 one named ; some two inches narrower. The edge next the aisle, when turned out, and resting in a horizontal position, something like an inch thinner than the one that was hinged to the platform fastened to the wall of the car. The top side of it when spread out in a horizontal position for night use had slats on its top surface the same as the one which was attached to the wall of the car. The opposite side of it, when I first put it on the road, had slats similar to the opposite side ; but afterwards it was changed and had webbing on the side which formed the top side when to be used as a day car. There was a piece of wood put on the ends of them different from the frame of the platform. Don't
- 1054 recollect whether it was cherry or black walnut. The edges of both of those platforms when one was resting on the other were covered with the same kind of wood as was on the ends of the outer platform when in a horizontal position. The piece forming the front edge of this top platform or seat projected above it at each edge of the platform, forming a projection above the seat for retaining the cushions.

1055 Adjourned at 2 P. M. to 8.30 A. M. to-morrow.

Saturday, July 16, 8.30 A. M., Resumed.

Present—Counsel as before.

X-Q. 244. How thick was this middle berth ?

A. About four inches.

X-Q. 245. Did that middle berth have those spring slats in it ?

A. I don't much think they did.

1056 X-Q. 246. What formed the bottom of that middle berth ?

A. It was covered with some thin material, of wood.

X-Q. 247. How was the top of it formed, the middle berth ?

A. There was a cushion on it.

X-Q. 248. A permanent cushion attached to it ?

A. It was.

X-Q. 249. Did this middle berth fall down flat against the side of the car to form the back of the seat? 1057

A. It fell down to a vertical or nearly vertical position.

X-Q. 250. But inclined towards the centre of the car, did it?

A. Not that I recollect of.

X-Q. 251. Was this middle berth hinged directly under the windows?

A. It was.

X-Q. 252. You came down to Richmond once or several times to hunt up witnesses to prove that the double acting Stevens brake was on some cars of the R. F. & P. Road in the year 1838, did you not? 1058

Objected to as incompetent, irrelevant and immaterial.

A. That I put them on some cars of the R. F. & P. Road.

X-Q. 253. Those double acting Stevens brakes worked successfully on the R. F. & P. Road cars until you left the road in 1840, did they not? 1059

Same objection.

A. I considered they did.

X-Q. 254. Will you just describe briefly that double acting Steven's brake that was on that old berth car in 1838 and '9?

Same objection.

A. The brakes were on the two outer ends of the truck, hinged from the inside of the end bars. There was a lever attached to the inner edge of the brake-beam, by a shackle attached to the beam, a bolt passing through its centre, in which there was an iron lever. Attached to the bottom end of this lever, about six 1060

1061 inches from the end of it, the bolt passing through the shackle and the lever attaching it to the brake-beam, forming a flexible joint. At the bottom end of this lever there was a rod having a shackle; a bolt passing through the rod and end of the lever was attached to the lever at the opposite end of the truck in the like manner as I have just described, forming a connection between the two levers. The top end of these levers inclined outwards towards the ends of the truck. From the top of the lever nearest the ends of the body there was a rod extended from the top of this lever to the top of the lever at the outer ends of the truck at the opposite end of the car. Near the inner end of each truck, or end nearest the centre of the body, there was a flexible joint on the end of the rod that I have described as connecting the two outer levers, the rod was suspended from the floor of the car; this joint was formed on this rod by an eye in which there was a link and hook attached, to hook into the eye on a rod which extended from the front end of the truck to meet it. The truck at the opposite end of the car in the same manner. From the top of the lever farthest from the end of the body there was a rod attached to the chain towards the outer end of the truck, from twelve to sixteen inches in length, one end of this chain was attached to a vertical windlass on the outer edge of the platform. The opposite end of the car in like manner. These windlasses had on them near the top of the platform a ratchet wheel and a dog or catch fastened to the platform near it, for the purpose of holding the brakes against the wheels, when forced on by the windlass by a wheel twelve or sixteen inches in diameter, on the top of this vertical windlass.

1063

1064 X-Q. 255. You went on the stand and testified as to the construction and operation of this double acting Stevens brake on the R. F. & P. Road in 1838, did you not?

Same objection.

A. I did.

X-Q. 256. When and where, and in what case ?

1065

Same objection.

A. In the city of New York ; then again in Richmond I think I testified in Richmond, I am not certain about that though, there was such a wrangle at that time. First in 1875 in the city of New York. It was either Emigh or Cousins against some dozen of roads. I can only remember the New York & Erie, the New York Central and Harlem.

X-Q. 257. Did you never testify in a case, in regard to the construction of brakes on the R. F. & P. Road against the New York Central Road, about the year 1862 ?

1066

Same objection.

A. I may have given an affidavit, I don't recollect now, nor to whom I might have given it.

X-Q. 258. You know Mr. Emigh and Mr. George Payson of Chicago don't you, or at least they know you ?

1067

A. I saw Mr Emigh twice sometime in 1861 or '62. Once at my shop on Green Island ; once in the city of Albany, when he requested me to give him an affidavit as an expert about the merits of two separate kinds of brakes. I understood he had a suit against the Chicago & Northwestern Road, if I am not mistaken in the name, Chicago was one. I know Mr. Payson.

X-Q. 259. You gave Emigh an affidavit in 1862, did you not ?

Same objection.

1068

A. 1861 or 1862.

X-Q. 260. How much did you charge him for it ?

Same objection.

A. I didn't make any charge.

1069 X-Q. 261. He paid you a hundred dollars, didn't he?

Same objection.

A. He gave me ten dollars.

X-Q. 262. And you took it?

Same objection.

A. He gave it to me after I had given him the affidavit, and I took it.

1070 X-Q. 263. This man W. N. Bragg also went in with you in that brake business, didn't he, and you and he hunted together and gave your testimony together?

Same objection.

A. When he gave his testimony in New York City he was brought on by Ivory P. Hodgdon.

1071 X-Q. 264. You know, don't you, that no reliance was placed on yours and Bragg's testimony in regard to that old brake, and your testimony was not taken as proving the existence of the brake, as sworn to by you and Bragg?

Same objection.

A. I don't know anything about it.

X-Q. 265. Was that thirty-two-foot car on the R. F. & P. Road at the time you went to work in 1837 a four or an eight-wheel car?

A. An eight-wheel car.

1072 X-Q. 266. And when you built the two cars at Boshers, you copied and measured the thirty-two-foot car, did you not?

A. I did not.

X-Q. 267. Will you swear positively that the forty-two-foot cars built at Boshers that you have described were over eight feet wide on the outside?

A. I will.

X-Q. 268. You are just as confident of that, are you not, as anything you have sworn to in this deposition? 1073

A. I am confident it was about nine feet wide, for I measured the width of the thirty-two-foot one after I went to work for the company.

X-Q. 269. And the thirty-two-foot and forty-two-foot cars were the same width, were they?

A. The forty-two-foot were a foot wider than the thirty-two-foot.

X-Q. 270. Don't you know that a nine-foot wide car couldn't have passed over the R. F. & P. Road prior to 1840 on account of the bridges? 1074

A. I don't know it.

X-Q. 271. What was the gauge of the track of that road prior to '40?

A. I understood it was called four foot eight gauge.

X-Q. 272. To what did you fasten the partition which you say that you put in that old berth car?

A. To the floor at the bottom and screws in the side to what we call the wall edge of the partition; pieces fastened to the roof of the car at the top.

X-Q. 273. How far apart were the carlines of the car, and how far down did they extend into the car? 1075

A. They were about two inches and a half in depth, my recollection, and probably not more than fourteen to sixteen inches apart. They put them close together because they put on thin roofing at that time half to five-eighths thick.

X-Q. 274. How thick was the upper berth in that car, and did it have those elastic slats forming the bed bottom?

A. From four to five inches. It had the slats.

X-Q. 275. What formed the under side of that upper berth? 1076

A. It was covered with thin wood, forming the bottom.

X-Q. 276. Whereabouts was that upper berth hinged relative to the top of the square windows?

A. Near the top of it.

- X-Q. 277. Above or below the top of the square windows?
- 1077 A. I should think above it, if anything.
- X-Q. 278. How near was the highest point of the gothic windows to the ceiling of the car?
- A. Eight or ten inches, I should think, or thereabouts.
- X-Q. 279. Were there any windows in the ends of that old berth car?
- A. Not in the ends of the car.
- X-Q. 279½. What was the weight of each of those two forty-two-foot cars?
- 1078 A. If they were ever weighed, I didn't know it.
- X-Q. 280. What color was the inside of that car painted when fitted up with berths?
- A. It was grained to imitate some light colored wood, as I recollect.
- X-Q. 281. How thick were the side-walls of each of those forty-two-foot Boshers cars?
- A. They didn't exceed five inches, I think.
- X-Q. 282. How far did those pillars or braces helping form the sides of that Boshers car extend into the car?
- 1079 A. The thickness of the pillar was notched out about half an inch, according to my recollection; then the belt under the window projected over the pillar some half to three-quarters of an inch.
- X-Q. 283. You have stated, have you not, that there was no other car with any kind of sleeping devices running on the R. F. & P. Road while you knew anything about it, except the one you have testified about?
- A. That's the only one I know anything of.
- X-Q. 284. How many passengers on an average came in on the passenger train on the R. F. & P. Road prior to 1840?
- 1080 A. I never paid any attention to it.
- X-Q. 285. Do you know, of your own knowledge, whether any person who ever rode on that car knew that the seat could be unfolded for a berth, and that the upper berth could be moved?

A. I did.

X-Q. 286. Mention the name of some person who knew that fact, that isn't dead? 1081

A. I can't do it, except myself.

X-Q. 287. I understood you to say that you slept in that upper berth once; just describe how you got up into it?

A. Raised the middle berth, and put my foot on that that's the way I got in; I made a step-ladder to go with the car.

X-Q. 288. Were there any curtains hung up in front of these berths?

A. There was.

X-Q. 289. Where were these curtains hung? 1082

A. From rods attached to the earlines.

X-Q. 290. Those curtains were permanently attached, were they, to this rod?

A. I have never given that a thought; they were hung up; they looped up against the partitions; that is, I have seen them looped up.

X-Q. 291. You have read over, or looked over, the depositions of these different parties who have been examined, have you not?

A. I have neither heard read nor read over the depositions, and don't know a word they testified to except what I heard of William Bragg's, and that I paid no attention to. 1083

X-Q. 292. Were there any sheets in that old berth-car in connection with the bunks?

A. There were some thick blankets got for cold weather.

X-Q. 293. What kind of pillows were there?

A. Curled hair pillows.

X-Q. 294. Round?

A. I think they were rather flat than round. 1084

X-Q. 295. That car was not intended for people to undress and go to bed in, was it?

A. They could have done it very conveniently for what I see.

X-Q. 296. Of what were those mattresses formed in the berth-car?

1085 A. Hair, and some kind of a covering contained the hair; over one side of which and the edges and ends what I called drab colored moreen.

X-Q. 297 How wide was the space in the end of the car where the stove was placed?

A. Some three feet to three feet six, lengthwise the car.

X-Q. 298. And directly opposite the stove was a seat the same width, was there?

1086 A. There was a seat there the same length of the space between the end of the car and partition, lengthwise of the car.

X-Q. 299. How long was that seat?

A. Three feet, or three feet six.

X-Q; 300. You are the same witness who made an affidavit about the construction of that old berth-car in the case of the same complainants against the Baltimore & Ohio Rail Road Company, last fall, are you not?

A. I gave an affidavit to be used in that case.

1087 X-Q 301. And you were present in the Court room a portion of the time while the case was being heard, were you not?

A. I was in two or three hours, I should think, at most.

X-Q. 302. You swore positively in that affidavit, did you not, that you constructed this berth-coach arrangement in 1838, and that the car ran in 1838, '39, and '40 as a passenger and sleeping car?

Objected to as incompetent, irrelevant, and immaterial.

1088 A. What I meant was '38 or '39, and thought I had said so until this present moment.

X-Q. 303. And if you swore in that affidavit that there were partitions between the berths, and the upper berths were movable, you meant to swear, didn't you, that it was some other car that was constructed that way?

Same objection.

A. I meant this identical car that I have been describing. 1089

X-Q. 304. You swore in that affidavit that the upper berth consisted of a platform permanently hung by hooks projecting from the upper edge of its outer or wall side at its ends, which hooks entered eyes fastened to the transverse partitions. Were you telling the truth when you made that oath?

Same objection.

A. Hooks on the ends of the strap hinges entered eyes attached to the wall edge of the partition and to the belt at the top of the bottom window. 1090

X-Q. 305. Have you got another model like this defendants' exhibit "Richmond Car?"

A. I have no model at all.

X-Q. 306. Well, what model is it you have been showing these witnesses and trying to get them to recollect a certain construction of that old berth-car?

Objected to as irrelevant, immaterial, and incompetent. 1091

A. I had a model that I sent on to Baltimore representing the several devices of that car; which after witnesses would give a detailed description of said car, I would then show them the model.

X-Q. 307. Who did you first tell anything about the construction of that old berth coach after 1840?

A. I told many persons; it was a subject of frequent conversations what I had done.

X-Q. 308. Well, name some of the persons you told about it? 1092

A. The first prominent person I remember giving a detailed description to was William Whiting, of Boston, Mass.; I think in 1856, or thereabouts.

X-Q. 309. Did you make an affidavit at that time, or

any statement in writing, about the construction of that old berth coach, or exhibit any model to Mr. Whiting?

1093 A. I did not.

X-Q. 310. When was the first affidavit or model you ever made describing or showing your alleged construction of that old berth coach?

A. I am not positive what year I gave it in; 1860, or 1861, I think.

X-Q. 311. Who did you give your affidavit to at that time, and in what case, in relation to that old berth coach?

1094 A. I presume I gave it to Wm. Whiting, I am not positive. I thought it was *Woodruff vs. Barney & Williams Co.* It was Barney and somebody, of Dayton, Ohio, I think. I think I went to Troy to give it.

X-Q. 312. Did you furnish a drawing or model with that affidavit, of that old berth coach, in 1860 or 1861?

A. Not at the time I gave it.

X-Q. 313. Did you afterwards?

1095 A. I did. I received an order from him, Wm. Whiting, to make and ship him a model, and come out immediately after it was finished. It was a very rude affair, merely to show the device. I had it made, boxed and shipped in one day, and started that night to Cincinnati, Ohio.

X-Q. 314. With whom did you leave it?

A. I shipped it to Wm. Whiting, Cincinnati, that was the last I saw of it.

X-Q. 315. Who did you see at Cincinnati, what year was it?

A. I saw Wm. Whiting, I think, the associate counsel, Lincoln, if I am not mistaken in the name, in 1861.

1096 X-Q. 316. And Mr. Whiting came on here and took the deposition of Saml. Ruth and Thomas Dodamead after you gave him a description of that old berth coach, didn't he?

A. If he did I was never informed of it.

X-Q. 317. Mr. Saml. Ruth and Thomas Dodamead were connected with the R. F. & P. Road at Richmond when you were with the road, weren't they?

A. If they were I didn't know it. Don't recollect of hearing their names.

X-Q. 318. When was the next affidavit and who for, after 1861, relating to the construction of that old berth coach on the R. F. & P. Road? 1097

A. In 1875 or '6, for Mr. Philipp, now present.

RE-DIRECT EXAMINATION.

R-D-Q. 319. You have been very particularly asked the different places where you were employed, and lengths of time and wages received in such employments, included within the period of 1867 and the present time; will you please state where you worked between February, 1840 and the year 1867, in order to complete the history of your different employments? 1098

A. From April, 1840, to sometime in the middle of the summer of '42, I worked for Gilbert Vanderworcken, Newark, N. J., on cars, omnibus bodies, cab bodies and two eight wheel passenger coaches for Cuba. Then three or four months I took a contract laying rails on the New York & Erie Road, until sometime in November. Immediately after that I went into the employ of Gilbert & Bush, Troy, N. Y., and continued in their employ or their successors, Eaton, Gilbert & Co., Gilbert, Bush & Co., until 1867. The first three years I was foreman of the car shop building cars. From 1845 to 1867 I took cars to build by contract for them. I had my own shop from the commencement, 1845. I had my own machinery from 1852 to 1867. 1099

Adjourned at 1 to 2.30 P. M.

2.30 P. M., Resumed.

R-D-Q. 320. You have testified in answer to X-Q. 280, that you made a bargain last fall to be paid by the day, and in answer to X-Q. 281, that you were to have ten dollars a day, and in answer to X-Q.'s 86 and 87, you were here last fall, in October and November, for 1100

about three weeks ; who paid you for that three weeks, work of last fall ?

1101 A. I made out my bill against the Baltimore & Ohio Railroad Company. It was sent to them and they paid it.

R-D-Q. 321. This work during those three weeks was for the Baltimore & Ohio Railroad, was it ?

A. I so understood.

1102 R-D-Q. 322. You say in answer to X-Q. 80 that there has been no understanding since last fall as to what you should be paid for your services, and in answer to X-question 109 you say that the understanding was that the defendants in this case were to reimburse you for all monies expended by you in addition to ten dollars a day, which of these statements is correct ?

Objected to as an evident attempt to induce the witness to change his sworn statement in regard to the sums of money paid and to be paid him by these defendants for his services in their behalf, and as not calling for any explanation of testimony given.

1103

Question withdrawn.

R-D-Q. 323. You say in answer to X-Q. 80, in substance, that since last Fall there has been no understanding as to what you should be paid for your services, and in answer to X-Question 109, which was : "The defendants are to reimburse you for all monies you pay out, your bills and expenses, in addition to the ten dollars per diem, were they not ?" You say : "That was the understanding." Please explain those statements?

1104

A. What I meant was there was no written or verbal understanding between the defendants and myself. For the time that I was down here in February and March, and expenses and disbursements, I presented the bill to the defendant, and it was paid, and on that ground I

expect to be paid for my present services and expenses. I was paid ten dollars a day for the time in February and March. 1105

R-D-Q. 324. You say, in substance, in answer to X-Q. 143, that there were not, to your knowledge, any other passenger cars running on the R. F. & P. Road at the time Boshier built the seven; and in answer to X-Q. 183 you say that you took the pattern in height for those two forty-two foot cars that you built at Boshier's from the car that was thirty-two feet long, and which, in another part of your deposition, you say you understood was built by the said road at its shops before you went to work for it. Please explain those statements?

A. Previous to my building the two forty-two foot cars, I had built five four wheel passenger cars at Boshier's. I understood from Boshier that the height he gave me was the height of a car that they had on the road 1106

R-D-Q. 325. You have in several places in your deposition stated that these two forty-two foot passenger cars that you built at Boshier's were about six feet six inches in height, inside next to the walls of the car, and about seven feet in height inside at the centre; are these heights to be understood as from the floor to the bottoms of the earlines or to the boards forming the roof proper? 1107

A. Bottom of the earlines.

R-D-Q. 326. You say in answer to X-Q. 143, which is as follows: "Were there any other passenger cars run on the R. F. & P. Road prior to the time of your leaving that road in February, 1840, except these seven cars you have described being built by James Boshier?" that "I have no knowledge of any others;" and in answer to cross-questions 180 to 184, inclusive, you say, in substance, that there was a passenger coach thirty-two feet long that you understood was built by the road, on the track when you went into its employ, and that it ran afterwards on the road. Please to explain those statements? 1108

A. Well, I omitted mentioning the one that was made by the company.

R-D-Q. 327. Are either Ivory P. Hodgdon or James Coghill alive?

1109 A. Neither; both dead.

R-D-Q. 328. What did you do with the affidavits you say were given you by Coghill and Pendleton?

A. I directed them to J. K. Cowen, Counsel for Baltimore and Ohio Rail Road.

R-D-Q. 329. In changing the Boshier car into a sleeping car, state whether or not you first removed the seats of that car?

A. Previous to changing it into a sleeping car I removed them.

1110 R-D-Q. 330. You say that you made a rude model in a day for Mr. Wm. Whiting of the old sleeping car in 1861, state generally how that model was constructed, and about its size, if you recollect?

1111 A. The model was the size of one section of the sleeping berth in length, and in height about six foot six to the underside of the carlines from the floor. There were partitions of ceiling boards, about twenty inches in width, from the wall of the car towards the aisle, and extended vertically from the floor to the roof of the car. The bottom berth was composed of two platforms. One was hinged at its upper edge to the wall of the car. The other platform was hinged to the aisle edge of the first platform, having legs hinged to its bottom aisle edge. When this platform was in a horizontal position, folded out towards the centre of the aisle, these legs would drop down and rest upon the floor, supporting it in that position. Near the aisle edge of the platform which was hinged to the wall of the car, there was a plank running parallel with the side of the car, extending vertically from the floor to the bottom of the berth, when it was in a horizontal position, about seven or eight inches in width from the floor.

1112 The platform nearest the aisle could be turned on its hinges upward and outward towards the wall of the car, and resting in a horizontal position on the top of the first named platform. The two when lying thus could be raised by their aisle edge to give access to a

box beneath them, formed by the plank in front near the front of the berth or seat, the floor forming the bottom, partitions at each end of the berth or seat, the wall of the car. The middle berth was a board hinged by its outer or top edge to the wall of the car, and when raised to a horizontal position represented the middle section of berth, and was supported in that position by springs springing out from the partitions near the aisle edge. This board, when turned down to a vertical position, represented the back of the seat beneath it. There was an upper or top berth, formed by a board having its wall edge beveled, having a piece fastened on this bevel extending up three or four inches and hinged by its top outside edge to the wall of the car. This board, when resting in a horizontal position, rested on blocks fastened near the aisle edge of each partition. This board, when turned up towards the roof of the car, was attached to a piece extending from the roof of the car, and was there held by some simple arrangement, a button or something of that kind. When in this position the bottom outer edge of the berth was about at right angles with the wall of the car. That section thus formed was intended to represent rudely one section of the old sleeping car.

R-D-Q. 331. How did the bottom of this upper berth stand when it was turned up by the hinges and hung by the button?

A. At an angle of about forty-five degrees.

R-D-Q. 332. This rude model had no mattresses?

A. It did not.

R-D-Q. 333. How did you come to make it so rudely?

A. I had but one day to make and ship it in.

R-D-Q. 334. How long was each berth in this model, about?

A. About six feet.

RE-CROSS EXAMINATION.

R-X-Q. 335. Did you give any testimony in that case

of Woodruff against Barney other than the affidavit you
1117 have mentioned?

A. I did not.

R-X-Q. 336. You don't know whether anybody ever
saw this six foot high model you have just described
except yourself after it was shipped?

A. I do not.

R-X-Q. 337. Who helped you build that model, and
by what road did you ship it?

A. I don't recollect; the hands in the shop. I pre-
sume it was shipped by the New York Central. It was
built in my shop at Green Island, right opposite Troy,

1118 R-X-Q. 338. Where did that old berth car stand in
the city of Richmond prior to 1840?

A. When it was not on the road it was run into the
freight house. The freight house is on the corner of
Broad and Eighth Streets. I said in the freight house,
I meant under a shed adjoining the freight house.

STEPHEN W. WORDEN,

5.30 P. M., July 16, 1881.

1119 Adjourned to Monday, August 1, 1881.

Richmond, Va., August 1, 1881.

Adjourned to August 15, 1881.

I, Jo. Lane Stern, Special Examiner, herein do here-
by certify that the foregoing deposition was duly taken,
sworn to and subscribed in my presence at the time
and place therein mentioned.

1120

July 16, 1881.

JO. LANE STERN,
Special Examiner.

1121

IN THE CIRCUIT COURT OF THE UNITED
STATES,

FOR THE NORTHERN DISTRICT OF ILLINOIS.

GEORGE M. PULLMAN AND PULL-
MAN'S PALACE CAR COMPANY,

versus

THE NEW YORK CENTRAL SLEEPING
CAR CO., AND WEBSTER WAGNER.

In Equity.

1122

Further testimony taken on behalf of the defendants under the 67th Rule in Equity as amended, before Thomson H. Palmer, a special examiner, duly appointed in said cause, the complainants being represented by C. K. Offield, Esq., and the defendants by H. T. Munson, Esq.

1123

RICHMOND, Va., August 15th, 1881.

Met pursuant to adjournment.

JOHN T. BOOTH, a witness produced on behalf of the defendants, being duly sworn, deposes and says as follows:

Q. 1. What is your name, age, residence and occupation?

1124

A. John T. Booth; age, 37; residence, Richmond, Va.; and occupation, upholstering and paper hanging.

Q. 2. Did you know William Booth, who formerly carried on the business of upholstering in the city of Richmond, Va.?

1125 A. I did; he was my father. He was in business from 1828 up to the time of his death in 1867.

Q 3. Did you succeed him in business?

A. Yes, sir.

Q. 4. Where are his old books of account covering the years 1839 and 1840?

A. I suppose they were destroyed by fire at the evacuation of the city of Richmond in 1865. The store was burned at that time. I have never seen the books, and don't believe they are in existence.

Q. 5. Were you familiar with your father's handwriting during his lifetime?

1126 A. I was.

Q. 6. Did you ever see him write his name?

A. Many times.

Q. 7. Please look at the "Defendants' Exhibit Booth's Bill for Richmond Car," entitled in this cause, and say who, if you know, wrote the signature "William Booth," which appears at the end of the first page of said bill?

A. My father wrote that; to the best of my knowledge and belief that is the only writing of his on the bill. I am satisfied that he wrote that signature.

1127

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 8. In whose handwriting is the body of this bill?

A. I cannot say.

X-Q. 9. To the best of your knowledge and belief, whose handwriting is it?

A. I don't know; I was a partner with my father in business after the war, and am perfectly familiar with his handwriting.

1128 X-Q. 10. Have you not stated that you believe the handwriting of the body of this bill to be your brother's?

A. No, sir; I never saw his writing to know it.

X-Q. 11. Do you state that the three last lines of this bill, immediately preceding the signature of William

Booth, is not in the same handwriting as the name William Booth?

A. No, sir; I don't think it is my father's writing. 1129

X-Q. 12. Will you swear positively that the three last lines of this exhibit bill are not in the same handwriting as the signed name, William Booth?

A. I will swear as point blank as you can concerning a thing that you did not see done. I do not believe those three lines were written by my father.

RE-DIRECT EXAMINATION.

R-D-Q. 13. When did your brother die?

A. That is beyond my recollection; I believe when I was a very small child. 1130

JOHN T. BOOTH.

Attest:

THOMSON H. PALMER,
Special Examiner.

RICHMOND, Va., August 15th, 1881.

Afternoon session.

GEORGE W. ANDERSON, a witness produced on behalf of the defendants, being duly sworn, deposes and says as follows: 1131

Q. 1. What is your name, age, residence and occupation?

A. George W. Anderson; age, 57; reside in Richmond, Va.; and occupation, upholstering and paper hanging.

Q. 2. Did you ever know William Booth, a gentleman formerly carrying on the same business in this city?

A. I did; I was employed by him from 1838 to 1846. 1132

Q. 3. Where is he now?

A. He is dead a long time ago.

Q. 4. Did you know James Booth, his son?

A. I did; he was a clerk in his father's store, and kept the books.

Q. 6. Where is he?

1133 A. He is dead. He died in '43 or '44; about that time.

Q. 6. Were you familiar, during their lives, with the handwriting of William Booth and his son James?

A. Yes, sir; I was very familiar with it, as I saw them both write almost every day.

Q. 7. Did you frequently see William Booth sign his name?

A. Yes, sir; very frequently.

Q. 8. Please look at the bill exhibited in this cause, and marked "Defendants' Exhibit Booth's Bill for
1134 Richmond Car," and say, if you know, in whose hand the body part of said bill is written?

A. To the best of my knowledge that is written by James H. Booth, the son of William Booth, and the signature to the bill is undoubtedly that of William Booth, that is beyond all question. I have seen that written a thousand times.

CROSS-EXAMINATION BY MR. OFFIELD.

1135 X-Q. 9. The last three lines of this bill are in the same handwriting as the name William Booth, are they not?

A. Those are not in the handwriting of William or James H. Booth. I should infer from my knowledge of writing that they were not written by either of these parties.

GEORGE W. ANDERSON.

Attest:

THOMSON H. PALMER,
Special Examiner.

1136

Adjourned to 10 A. M., Tuesday, Aug
16th, 1881.

RICHMOND, Va., August 16th, 1881, 10 A. M.

Met pursuant to adjournment.

1137

Present :— Counsel as before.

JAMES B. WINSTON as witness produced on behalf of the defendants, being duly sworn, deposes and says as follows :

Q. 1. Please state your name, age, residence and occupation ?

A. James B. Winston, age 51, residence Richmond, Va., and I am Secretary and Treasurer of the Richmond, Fredericksburg and Potomac R. R. Co.

1138

Q. 2. Please look at the three documents now handed you each entitled in this cause and marked respectively Defendants' Exhibit "Booth's Bill for Richmond car," Defendants' Exhibit "Richard's Bill for Richmond car," and Defendants' Exhibit "Worden Bill," and state if you ever saw them before and where?

A. Yes; I have seen them before; filed amongst the vouchers of the Richmond, Fredericksburg and Potomac R. R. Co.

Q. 3. Whether or not they were recently found in such archives and loaned for use as exhibits herein?

1139

A. Yes, they were.

Q. 4. Whether or not W. N. Bragg was present when the Booth's Bill and Richard's Bill were found?

A. Yes, he was.

Q. 5. Please state, if you know, in whose handwriting the following matter is written, viz.: the last three lines on the face of the Booth Bill; the endorsement beginning with the word "locomotive" and ending with "folio 176," on the back of said bill; the words "sleeping car" along the margin of the first page of the Richard's Bill, and the endorsement beginning "locomotives" and ending "November 2d, 1839," on the back of said bill, and the written endorsement on the back of the Worden Bill?

1140

A. I believe they are all in the handwriting of Mr.

1141 Hilary Baker, the treasurer of the company at the dates of these several endorsements.

Q. 6. He has been dead a great many years, has he not?

A. Yes, sir; I think he died about '40 or '41.

Q. 7. Have you not at my request examined the books of the R. R. Co., to ascertain what, if any, entries of these bills therein appear?

A. I have.

Q. 8. Will you please state the result of that examination?

1142 Complainants' Counsel objects to any testimony of this witness as to the result of any requested examination as incompetent, irrelevant, and objects to all testimony of this witness as to the contents or showing of any books, papers, or other documents, the production of these books or documents being the best evidence.

1143 Q. 9. The witness will please state whether he has any power or right to produce the books of the company for filing for use in this adjudication?

A. None.

Q. 10. Please answer question 8.

Last objection repeated.

A. I find in Journal A, on page 171, which is headed: "RICHMOND, November 30th, 1839," the following entries:

"SUNDRIES DR. TO CASH.

1144 "Locomotives, Cars etc.
2d. Paid C. J. Richards & Co., for hardware \$73.50
To S. W. Worden, for labor 1.50"
On page 176 which is headed: "RICHMOND, January 31, 1840." the following entry:

"Locomotives, cars etc., Dr. to William Booth.

For his bill of sundries furnished on 17th Octo.
and 16th Dec. last..... \$649.93" 1145

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 11. Were you employed by the defendants to examine the old books, vouchers, and other papers of the R. F. & P. Co. to ascertain the facts you have testified to?

A. I was not. I was asked in the first place by Mr. W. N. Bragg, and subsequently by Mr. Munson, to make this examination, and did so at their request.

X-Q. 12. Have you not made a thorough search 1146
through all the books, papers, and other documents of the R. F. & P. Co., running as far back as the year 1838 and as far down as the year 1850, for any item, reference, or entry of any kind which would refer to any cars or parts of cars used or run for sleeping cars on that road between 1838 and 1850?

A. I have made such an examination between those dates with reference to the obtaining of such information, and have given the result of that examination in answer to question 8.

X-Q. 13. You found no reference or indication among 1147
the books, papers, vouchers or documents of any kind relating to the business or cars of the R. F. & P. Road between the years 1838 and 1850, of but one car ever having been used or constructed for sleeping purposes on that road between the dates given, did you?

Objected to as incompetent, irrelevant
and immaterial, as the witness has not
stated that these bills refer to the con-
struction of any particular number of cars,
and has testified only with reference to 1148
finding these particular written documents
in said archives.

A. The three vouchers found and made exhibits here contain all the information I have on the subject.

1149 X-Q. 14. Then, as I understand you, the three vouchers referred to by you in your deposition, together with the memoranda you have sworn to as being taken from the company's books, embodies and contains all the references, and shows all the facts relating to any sleeping cars ever run or used on the R. F. & P. Road between 1838 and 1850, so far as the documents or papers of any kind of that company between those dates would show such fact?

A. I believe they do.

1150 X-Q. 15. All of the papers and books of account and documents used by that road between the dates of 1838 and 1850 are now in the possession of the road, and it is for the reason that they desire to preserve and keep them that you do not desire to produce them here; is that so?

A. I believe they are. I do not believe that I have the right, as the custodian of the books of the company, to allow them to go out of my possession. I have no interest whatever in this matter.

RE-DIRECT EXAMINATION.

1151 R-D-Q. 16. Is it not true that all ordinary repairs and changes in cars not requiring the purchase of special material, only show in the charges for work and services, and the general purchase of material in the vouchers and books from 1838 to '50, so far as your knowledge extends, from the examination of such books and vouchers.

A. I think so.

JAMES B. WINSTON.

Attest:

1152 THOMSON H. PALMER,
Special Examiner.

Adjourned to 2 P. M.

2 O'CLOCK, P. M.

Adjourned to to-morrow, August 17th,
1881, at 8:30 A. M. 1153

RICHMOND, Aug. 17, 1881, 8:30 A. M.

Met pursuant to adjournment. Counsel
as before.

FREDERICK L. SWIFT, a witness produced on behalf of
the defendants, being duly sworn, testified as follows:

Q. 1. What is your name, age, residence and occupa- 1154
tion?

A. Frederick L. Swift; 64 last March; residence,
Richmond, Va., and occupation, merchant.

Q. 2. Where were you employed during the years
1840 to 1847, inclusive?

A. I was on the branch road of the Richmond, Fred-
ricksburg & Potomac Railroad, called the Louisa Road.
First, in 1840, I was deputy agent, employed by the
agent at Trevilians Depot, until say six months, com-
mencing in July about, and in 1841 I was appointed 1155
full agent at Trevilians Depot, and continued in the
employ of that company until the first of July, 1847,
at that station.

Q. 3. During such employment by the R. F. & P.
Road at Trevilians Station, did you know of a sleeping
car being run and used by said railroad?

A. I did.

Q. 4. Will you please describe that car?

A. It was built something like the cars are now, only
not in modern style. It had three rows of berths. The
lower one could be opened and make a double berth o 1156
it. The middle berth was lowered by hinges or raised.
You could make it a day car or a night car; you could
close up the lower part and lower the middle berth for
a back. The upper berth, when changed to a day car,
was raised and fastened up to the ceiling by a strap or

something of that kind. The middle one was fastened up by bolts when it was used for sleeping.

1157 Q. 5. These upper, lower and middle berths were situated one above the other, were they not?

A. Yes, they were one above the other, with board partitions between the berths.

Q. 6. Whether there were any more than one set of three berths one above the other?

A. The car was full of berths of the same description—or that portion of it. That portion was the largest after taking off the ladies' room.

1158 Q. 7. Were there sets of these berths along each side of the car, with an aisle between them, or in the middle of the car with an aisle on one side of them?

A. The berths were on each side and the aisle in the middle.

Q. 8. Won't you please describe what you mean "with board partitions between the berths"?

A. The board partitions were between each berth on each side.

Q. 9. Do you mean between each set of lower, upper and middle berths, or between each upper and middle and each middle and lower berth?

1159 A. The way I should describe it, I should say that each berth had a partition between it, running from the ceiling of the coach down to the floor.

Q. 10. That would place the partitions between each lower berth and the next adjacent lower berth, and each middle and upper berth, and the next adjacent middle and upper berths, would it not?

Objected to as leading.

1160 A. It would.

Q. 11. Could a person while lying in either of these upper berths look directly into either of the next adjacent berths?

A. They could not, because of the partitions between.

Q. 12. Did these partitions reach back to the side of the car?

1161

Objected to as leading.

A. They did, close.

Q. 13. How far did they extend into the car; that is, how wide were they?

A. They were as wide as the upper and lower berth when they were prepared for sleeping.

Q. 14. You say "you could close up the lower part," what do you mean by "lower part"?

A. I mean the lower berth after it was used for sleeping could be closed up by turning it over. 1162

Q. 15. Turning it over on what?

A. Turning it over on the lower seat or berth.

Q. 16. Was it a single berth?

A. It was a double berth when prepared for sleeping.

Q. 17. Were the middle and upper berths single or double berths?

A. Both single.

Q. 18. Was the lower double berth any wider than the upper and middle berths when all were prepared for sleeping? 1163

A. It was.

Q. 19. How much wider?

A. It was nearly as wide again.

Q. 20. When the turning over part of this lower berth was turned out to form a double berth, whether or not it extended beyond the partitions between the sets of berths?

A. It did.

Q. 21. Was there anything used to separate the turned out extended part of these lower berths from the next adjacent ones? 1164

A. A head or foot piece, just which you choose to term it.

A. To the best of my knowledge and belief they were on the right hand side as you go in from the gentlemen's apartment. 1169

Q. 33. I mean with respect to the water-closet?

A. The water closet was on the opposite side from the large berths.

Q. 34. And where were the small berths situated?

A. Between the water closet and the end of the car.

Q. 35. Was there any stove or stove place in the car?

A. There was one in its front end, as it was termed then.

Q. 36. Do you mean in the end of the gentlemen's apartment? 1170

Objected to as leading.

A. I do.

Q. 37. Did it not obstruct the door?

A. I don't think it did.

Q. 38. Whether or not it was in the middle or side of the car at the end?

A. The side.

Q. 39. Was there anything on the opposite side of the car at that end? 1171

A. A short seat with a back.

Q. 40. Cushioned seat and back?

A. Cushioned seat and back.

Q. 41. Did these berths have cushions or mattresses?

A. The upper and lower berths had mattresses; the middle berth had a cushion stationary on it, the mattresses were loose.

Q. 42. Did the berths have either pillows or blankets? 1172

A. They had hair pillows, they had blankets too.

Q. 43. Was there anything at the front edge of the upper berth to keep the mattress from slipping out?

A. A strip.

Q. 44. When the upper berth was closed up to the

ceiling, was there any open space between its edge and the car roof?
1173

Objected to as leading.

A. There was none.

Q. 45. Did you ever ride in this car?

A. Often.

Q. 46. Ever lie down in its berths to rest or sleep?

A. I have slept in them in the car.

Q. 47. What opportunities had you of becoming so well acquainted with the construction of this sleeping car?
1174

A. By travelling in it, sleeping in it and explained by Capt. Darracott the conductor.

Q. 48. Do you remember any particular occasion when Capt. Darracott explained that car in your presence?

A. It was sometime in the year 1841. Capt. Darracott was one of those enthusiastic conductors, always ready to show anything that was not run every day, or was new on the road. On this occasion we were coming down to Richmond, and I remarked to him he had a different car, and he went on to explain and show the berths?
1175

Q. 49. How often did you come to Richmond during the time that car was running?

A. Every month, and sometimes oftener.

Q. 50. Whether or not you often rode in that car during such trips?

A. Several times.

Q. 51. Did you ever sleep in it while it lay in the City of Richmond?

A. I did on one occasion.
1176

Q. 52. Please look at the model now shown you marked Defendants' Exhibit Richmond Car, and say whether or not you ever saw a sleeping car the sections or berths of which were constructed like said model?

The model was put in position for sleeping purposes by defendants' counsel in the presence of the witness before he answered. 1177

A. The model is similar to the berths in the car I have testified about, as being used in the R. F. & P. R. R. at the time I was there.

Q. 53. I now ask you whether you remember in the old car the fact that the front extended part of the lower berth was arranged so as to swing up from the seat and outward into the aisle of the car, where it rested upon feet, as in the model?

A. I do.

1178

Q. 54. Are these boards marked "A" in the model like what you have called head or foot boards?

Objected to as leading.

A. They are.

Q. 55. In the old car you have testified about as being on the R. F. & P. Road when you were there, was the upper berth hinged to swing up and down as it does in this model? 1179

Objected to as leading.

A. It was hinged to swing up and down something like the model.

Q. 56. Was it hinged to the side of the car so as to be lowered and rest in a horizontal position, and have its front edge turned up to the roof as in the model?

Objected to as leading.

1180

A. It was.

Q. 57. Did you ever use a sleeping car for sleeping purposes on the Petersburg Rail Road between Peters-

burg, Va., and Weldon North Carolina. If yea, when?

1181 A. I did; sometime between '52 and '53.

Q. 58. What was the general arrangement of its berths?

A. There were three rows of berths on each side of the car.

Q. 59. In the sleeping car on the R. F. & P. Road was there any covering for the mattresses or pillows; I mean in addition to the stuff of which they were made?

A. There was a linen cover.

Q. 60. Do you remember whether they had any colored binding?

1182 A. I do not.

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 61. You say you are a merchant, where is your place of business and what kind of merchandise do you handle?

A. Wholesale liquor business, 1309 Cary street.

X-Q. 62. How long have been in the liquor business?

A. Since May, 1874

1183 X-Q. 63. Is that the usual way of designating dealers in liquors, as merchants?

A. It is.

X-Q. 64. What was your business prior to dealing in liquors in the year 1874—prior to that date?

A. From '47 down to '60, I was railroading. I was conductor and agent on the Virginia Central, the successor of the Louisa Road, and from '60, part of the time, to 1871, I was farming, I might say the whole of the time. I was in the army and the farm was there by itself; from 1871 to 1874, played gentleman

1184 X-Q. 65 Did you leave the employ of the Virginia Central at your own volition?

A. I did.

X-Q. 66. How far was this station on the Virginia Central R. R. in 1840, from the nearest point on the Richmond, Fredericksburg and Potomac Road?

A. Forty miles.

X-Q. 67. Between 1840 and 1847 you sold tickets on that road, didn't you, forty miles from the R. F. & P. Road? 1185

A. I did. I was employed by the R. F. & P. Co.

X-Q. 68. And whenever you saw that sleeping car you have attempted to describe you saw it down on the R. F. & P. Road, didn't you?

A. I saw it on the Louisa branch as a day car.

X-Q. 69. And you never saw that car in any other capacity than a day car, did you?

A. I have seen it as a sleeper on the R. F. & P. R. R. with the berths prepared and passengers in them. 1186

X-Q. 70. The first time you ever saw that car was when conductor Capt. Darracott exhibited it to you as you have described?

A. It was not. I saw it when Capt. Adams was running it as a night car on the R. F. & P. Road.

X-Q. 71. When was that?

A. Sometime between '40 and 42.

X-Q. 72. How many times did you see that car when Capt. Adams was running it as a night car?

A. Several times.

X-Q. 73. You knew all about the construction of that car, didn't you, when Capt. Adams was running it as a night car? 1187

A. Not until Capt. Darracott explained to me in the day time.

X-Q. 74. And until Capt. Darracott explained the construction of that car to you you didn't know how it was constructed?

. Not fully.

X-Q. 75. The only knowledge you have of the construction of that car is the knowledge you derived while riding on it occasionally on the R. F. & P. Road, is that so? 1188

A. I saw it on both roads as a day and a night car, a day car on the Louisa, and a night car on the R. F. & P.

- 1189 X-Q. 76. How many times did you ever see that car on the Louisa Road forty miles from the R. F. & P?
A. I can't say ; but several times!?
- X-Q. 77. You have ridden on it on the Louisa Road; haven't you?
A. I have.
- X-Q. 78. How many times, in what years, and between what points?
A. I can't say how many times, but several times; between Trevilians and the R. F. & P. Road, sometime between '42 and '44.
- 1190 X-Q. 79. That car ran on the Louisa Road, didn't it, between the years 1842 and 1844?
A. Occasionally it did, when the other coaches were scarce, but never a regular day car.
- X-Q. 80. Who was the conductor on that car whenever you saw it on the Louisa Road?
A. Capt. Darracott was the first conductor I ever saw run it upon the Louisa Road.
- X-Q. 81. Who was the next conductor you ever saw run that car on the Louisa Road?
A. I can't say as I recollect any other.
- 1191 X-Q. 82. Whenever you saw that car on the Louisa Road on its occasional trips it was always a day car, wasn't it?
A. It was.
- X-Q. 83. And whenever you saw it as a night car you saw it in the presence of Capt. Adams, who was the conductor running it on the R. F. & P. Road, did you?
A. He was conductor whenever I saw it as a night car.
- X-Q. 84. Will you swear that you ever saw that car more than twice on the Louisa Road?
A. I cannot.
- 1192 X-Q. 85. You are quite confident, though, are you not, that you did see that car sometime on the Louisa Road?
A. I am.

X-Q. 86. At what point on the Louisa Road did you see it?

A. I have rode in it from Trevilians down to Hanover Junction, forty miles. 1193

X-Q. 87. And that is the only time you have any recollection of seeing that old sleeping car on the Louisa Road, is it not?

A. I have seen it several times on the Louisa Road.

X-Q. 88. Well, where did you see it the other times; where were you?

A. I rode in it from Trevilians to Gordonsville and back the same day, nine miles each way?

X-Q. 89. When was that?

A. Sometime in the year '42 or '43 or '44, somewhere along there. 1194

X-Q. 90. Well, when was the next time you ever saw that car on the Louisa Road besides the two instances you have given?

A. I have no recollection of seeing it after the year '44 on either of the roads.

X-Q. 91. But you rode on those roads all the same, didn't you, right along?

A. I did.

X-Q. 92. Have you any recollection of seeing that old sleeping car on the Louisa Road except the two instances you have mentioned? 1195

A. I have not, but my impression is it was run very often.

X-Q. 93. What kind of carpets was there upon the floor of that old sleeping car that you have attempted to describe, on the R. F. & P. Road?

A. I can't say what kind they were when it was run at night, but there was none when it was run as a day car.

X-Q. 94. And you don't recollect whether there was any carpets on the floor of the car when it was run nights when Mr. Adams was conductor, do you? 1196

A. I do not recollect a carpet.

X-Q. 95. Were there any curtains to the windows

of that car, or blinds, when it was used as a day or night car on the R. F. & P. Road.

1197 A. I can't say. When used on the Louisa Road as a day car my impression was that there were curtains.

X-Q. 96. A good deal of this testimony you have been giving about the construction of that old sleeping car has been your impressions, has it not?

A. It has not. From actual observation.

X-Q. 97. In which apartment did you ride of that car, the ladies' or the gentlemen's?

A. Sometimes in one and sometimes in the other, depending altogether whether there were any ladies aboard or not.

1198 X-Q. 98. When the ladies were aboard, which apartment did you ride in?

A. The gentlemen's.

X-Q. 99. And you never rode in the ladies' apartment when there were any ladies in that apartment?

A. Not to my recollection.

X-Q. 100. What was the occasion of your trip each month between Trevilians and Richmond during and between the years 1840 and 1847?

A. Settle up monthly accounts

1199 X-Q. 101. Did you begin to make this monthly trip before you was an agent?

A. I did not; but was down very often with Capt. Darracott while deputy agent.

X-Q. 102. Capt. Darracott ran between Trevilians and Richmond, did he?

A. Capt. Darracott ran from Gordonsville to Richmond part of the time, and after the schedule was changed to a daylight line on the R. F. & P. Road he run down to Hanover Junction, where he transferred his passengers to the R. F. & P. Road.

1200 X-Q. 103. Who was the conductor on the R. F. & P. Road at that time when Capt. Darracott transferred his passengers?

A. Capt. Adams.

X-Q. 104. And Capt. Adams was conductor during

what years on the R. F. & P. Road?

A. From '39 to '42 or '43, along there. I can't say what year he was discharged and Darracott took his place. 1201

X-Q. 105. It might have been 1843 then, might it, when Capt. Darracott first explained to you the construction of that car?

A. It was not. It was between '41 and '43.

X-Q. 106. But it was after Darracott began running the train, wasn't it, the R. F. & P. train?

A. It was not; it was before he commenced running the R. F. & P. train.

X-Q. 107. On which road was it that Capt. Darracott explained to you, on account of your interrogatory, the construction of that old sleeping car? 1202

A. On the Louisa Road.

X-Q. 108. Did you ever ride on that old sleeping car on the R. F. & P. Road except between Hanover Junction and Richmond?

A. I have.

X-Q. 109. When was that and where?

A. On the Louisa Road.

X-Q. 110. I asked you on the R. F. & P. Road?

A. I never did. I misunderstood the other question. 1203

X-Q. 111. What year was it you slept that time in that car at Richmond?

A. It was somewhere about '43; sometime in '43.

X-Q. 112. Where was the car in Richmond?

A. Standing on the track opposite the Richmond & Fredericksburg Depot, up here on Broad Street.

X-Q. 113. Who else slept in that car that night?

A. Capt. Darracott and myself.

X-Q. 114. Any person else?

A. One of the train hands slept in the car adjoining, or baggage car, just as you please to term it? 1204

X-Q. 115. What year was that?

A. Between '42 and '43.

X-Q. 116. What color was the outside of that car painted on the R. F. & P. Road?

A. Well, I am a bad hand to describe colors, but I think it was a brown; a red or brown.

1205 X-Q. 117. What color was the inside of the car painted?

A. It was a light yellow, to the best of my recollection.

X-Q. 118. There were curtains hanging down from the ceiling in front of the berths in that old sleeping car, were they not?

A. None to my recollection.

X-Q. 119. Were there any windows in the ends of this old R. F. & P. sleeping car?

1206 A. None

X-Q. 120. How many windows were there in each of the sections between those partitions?

A. I do not know, as I never counted them.

X-Q. 121. You have sworn that that model shown you represents one section of that old sleeping car, and that model shows three windows in that section; do you mean to say that the model ain't right?

A. I do not intend to say it is not right. I never paid any attention to the quantity of windows, never expecting to be questioned how many there were.

1207 X-Q. 122. Yes, I suppose so. And you have only posted yourself to answer those questions you supposed would be asked you, is that it?

Objected to as a grossly impudent imputation, and as incompetent, irrelevant and immaterial.

A. I have never posted myself on the subject. All that I state is to the best of my knowledge of the car.

1208 X-Q. 123. How high was the window sills of that car from the floor?

A. They were the usual height of car windows, I suppose, but I never measured them.

X-Q. 124. Whereabouts did those partitions touch the wall of that car in reference to these windows?

A. They touched it between the windows.

X-Q. 125. Each one of those partitions then joined the car between the windows, is that it, on its wall side? 1209

A. Of course they must have joined between the windows on the wall side.

X-Q. 126. Why do you recollect that?

A. Because it would make the job more complete.

X-Q. 127. And whenever, in your own mind, you have become convinced that a certain construction of that car was necessary to make the job more complete, you have testified that such was the construction, have you not?

A. I haven't testified to anything but what I know to be so. 1210

X-Q. 128. And you know that the partitions of that car joined the car between the windows on the wall side of the car, just as well as you know that the partitions were in the car, don't you?

A. Well that is my knowledge of the partitions.

X-Q. 129. And you are just as confident of the one fact as you are of the other. are you not?

A. I am confident that the partitions joined between the windows. 1211

X-Q. 130. And you recollect that fact just as distinctly as you do the fact of there being partitions, do you?

A. I do.

X-Q. 131. You don't see, do you, how the job could have been completed in the constructing of that sleeper on the R. F. & P. Road without having partitions running from the floor to the ceiling between the berths?

A. Not if you wanted a complete job of it.

X-Q. 132. You recollect distinctly, do you not, that there was a partition between the ladies' and gentlemen's apartments forming these apartments? 1212

A. I do.

Adjourned to 6 o'clock, P. M.

1213 6 o'clock, P. M. Adjourned to Thursday, Aug. 18th, 1881, at 8.30 o'clock, A. M.

RICHMOND, VA., Thursday,
August 18, 1881, 8.30 o'clock, A. M. }

Met pursuant to adjournment.

Counsel appearing as before.

CROSS-EXAMINATION OF FREDERICK L. SWIFT, CONT'D.

X-Q. 134. What berth was it you slept in in that old
1214 sleeping car in Richmond?

A. It was a berth in the gentlemen's apartment, a lower berth.

X-Q. 135. Was there more than one stove in that car?

A. I never saw but one.

X-Q. 136. Was there any other place for a stove, except as described by you?

A. Not to my recollection.

X-Q. 137. Was it a wood or coal stove?

A. I cannot say.

X-Q. 138. That old sleeping car on the R. F. & P.
1215 Road looked like an ordinary passenger car on the outside, didn't it?

A. It did.

X-Q. 139. It was just like all the other passenger cars on the road, was it not, so far as the outside was concerned?

A. My recollection is, it was.

X-Q. 140. How many other passenger coaches were there running on the R. F. & P. Road and the Louisa Road, during the year 1841, which looked like this old
1216 sleeping car on the outside?

A. I can't say.

X-Q. 141. Was there ten?

A. Not to my knowledge.

X-Q. 142. Was there five?

A. I can't say.

X-Q. 143. But all the passenger cars that you ever saw on the R. F. & P. Road after you went in its employ had the same appearance and construction, so far as the outside was concerned, as this old sleeping car, had they not? 1217

A. Constructed the same as the others, so far as the running and appearance was concerned.

X-Q. 144. There was no difference then in the outside construction and appearance of any of the passenger cars on the R. F. & P. and Louisa Roads, after you went into the employment at Trevilians between 1841 and 1847?

A. None that I know of.

1218

X-Q. 145. How were the seats arranged in the other passenger cars of the R. F. & P. and Louisa Roads between 1841 and 1847?

A. Some of them had side seats, but the latter part of it they had the cross seat, something like the modern seat they use now.

X-Q. 146. In 1841 did not every passenger car running on either the R. F. & P. or Louisa Roads have side seats running along the sides of the car and no cross seats?

A. They had both kinds.

1219

X-Q. 147. Run upon both roads?

A. The equipments of both the roads was owned by the Richmond, Fredericksburg & Potomac Road, and was used upon both roads.

X-Q. 148. And both kinds of cars with longitudinal and cross seats were run upon both roads between '40 and '47, were they?

A. I can not speak of any except the Louisa branch.

X-Q. 149. Well, were both kinds run on that branch between those dates?

A. They were.

1220

X-Q. 150. Capt. Darracott is dead, is he not?

A. That is what his relations say. I know nothing to the contrary.

X-Q. 151. Can you mention the name of any person or persons who is not dead that was present when you

called upon Capt. Darracott for an explanation of the construction and operation of that old sleeping car as you have related?

1221

A. I cannot.

X-Q. 152. You had forgotten almost all about that old sleeping car until the matter was called to your attention a while back, had you not?

A. All except that I recollected that there was a sleeping car there of the kind I have described.

X-Q. 153. Did you refresh your recollection in any manner as to the construction of that sleeping car?

A. I don't know that I did,

X-Q. 154. Do you know a couple of individuals by the name of Bragg and Worden?

1222

A. I know Mr. Bragg very well, and have seen Mr. Worden, but can't say that I am acquainted with him.

X-Q. 155. You have talked with both of those persons about that old sleeping car, haven't you?

A. I have talked with Mr. Bragg in the presence of Mr. Worden about the car.

X-Q. 156. When and where did you last see Worden?

A. I passed him in the street day before yesterday.

X-Q. 157. Did you have anything to say to him?

1223

A. I did not.

X-Q. 158. Had you ever seen a model or drawing or description of that old sleeping car before you came here to give this deposition?

A. I had.

X-Q. 159. Had you seen the model that you testified about, before you went on the stand?

A. I saw a model, I don't know whether it was like the one that was present here or not.

X-Q. 160. Did the model which you saw correctly represent the old sleeping car you have described?

1224

A. In the main it did.

X-Q. 161. When and where did you see that model?

A. At the American Hotel; sometime last winter.

X-Q. 162. Did you make an affidavit as to what you knew about that old sleeping car?

A. I did.

X-Q. 163. Did you receive any money at the time or
about the time of making that affidavit? 1225

A. I did not.

X-Q. 164. Who was present when you examined the
model or made the affidavit?

A. When I examined the model, Mr. Bragg was present;
when I made the affidavit Mr. Bragg and Notary Stern were present.

X-Q. 165. When you first saw that model at the
American Hotel you hadn't any recollection of ever
seeing anything that looked like it before, had you?

A. I had.

X-Q. 166. Could any parts of these partitions that
you have been talking about, between the berths of that
old sleeping car, be removed? 1226

A. Not that I know of.

X-Q. 167. Were there any posts run from the floor
to the ceiling in connection with those partitions in
that old sleeping car?

A. I never saw any posts.

X-Q. 168. As a matter of fact don't you know that
the only partitions that you could recollect as being in
any part of that old sleeping car when you first began
to think about it, was the partitions separating and
forming the ladies' and gentlemen's apartments? 1227

A. It was not. It was not the only partition between
the berths.

X-Q. 169. You are a workman in the establishment
or for the parties who sell liquor in this city, at the
number you have given, are you not?

A. I am not, I am a full partner; I am a partner of
Ellison & Harvey.

X-Q. 170. Your name does not appear in connection
with either of these parties in the liquor business,
does it? 1228

A. Only in business transactions.

X-Q. 171. How many conversations have you had

- with different parties in behalf of these defendants
about that old sleeping car?
- 1229 A. I can't say.
X-Q. 172. Forty?
A. No.
X-Q. 173. Thirty?
A. No.
X-Q. 174. Fifteen?
A. No.
X-Q. 175. Ten?
A. No.
X-Q. 176. Nine?
- 1230 A. No.
X-Q. 177. Eight?
A. No.
X-Q. 178. Seven?
A. No.
X-Q. 179. Six?
A. No.
X-Q. 180. Five?
A. No.
X-Q. 181. Four?
A. It may be four.
- 1231 X-Q. 182. Three?
A. I can't say whether it was three or four.
X-Q. 183. You have seen different parties in the
interest of these defendants a great many times about
that old sleeping car, have you not?
A. Not very many.
X-Q. 184. How many?
A. I can't say positive.
X-Q. 185. Give your best judgment?
A. Two or three times.
- 1232 X-Q. 186. You were not subpoenaed, but went volun-
tarily to see that model and give your affidavit, and
also came without subpoenae to give this testimony,
did you not?
A. I have never been subpoenaed.

X-Q. 187. What was the length of that old sleeping car?

1233

A. I can't say, as I never measured it.

X-Q. 188. How many sets of berths were there on each side?

A. I can't say.

X-Q. 189. Were there three sets of berths in the gentlemen's apartment on each side?

A. There was.

X-Q. 190. Was there four sets upon each side, of berths?

A. I can't say.

X-Q. 191. Can you say whether or not there were seven sets of berths upon each side of the gentlemen's apartment?

1234

A. I cannot.

X-Q. 192. Will you swear positively that you ever rode in that old sleeping car on the R. F. & P. Road over five times in your life?

A. I will not.

X-Q. 193. You think, do you not, that the upper berths in that old sleeping car hooked up to the ceiling, because the job would not have been complete unless those berths were hooked up out of the way of the passengers?

1235

A. I know that the berth was hooked up.

X-Q. 194. And you think, do you not, that it would have to be hooked up to get it out of the road of the passengers in the day time, don't you?

Objected to as incompetent, irrelevant and immaterial, as this witness has not been qualified as an expert in car building, and as calling for a mere opinion, and not for facts within his knowledge.

1236

A. I think it was always hooked up when used as a day car.

X-Q. 195. And to make a practical day car out of it the berths had to be constructed so that the front edge

would hook up to the ceiling, in your opinion, wouldn't they?
1237

Same objection.

A. The berths were constructed to hook up.

X-Q. 196. And in your opinion they would have to be so constructed to make a practical day car of it, wouldn't they.

Objection is again made to this line of examination, which calls for an opinion, speculation and guesswork, as incompetent, irrelevant and immaterial. The witness is cautioned to state only facts within his knowledge, no matter what his opinion may be about any matter inquired of
1238

A. I can give no opinion on the subject.

X-Q. 197. What kind of bridges and what was their width on the R. F. & P. and Louisa Roads between '41 and '47?

A. There was none on the Louisa Road. The bridges over the Pamunkey River was a lattice bridge, I do not know the width.
1239

RE-DIRECT EXAMINATION.

R-D-Q. 198. If it should appear that you are mistaken about the partition, between the berths meeting the wall of the car between the windows, and it should appear to be the fact, that these partitions extended vertically across the windows away from the division posts between the windows, would that in any way change your recollection, that the sleeping car on the R. F. & P. Road was constructed with sections of berths divided from one another by fixed vertical partitions, the upper berths in which section were hinged to the car sides and
1240

swung up to the roof, as is shown in the model exhibit Richmond car, and as you have repeatedly testified? 1241

A. It would not.

R-D-Q. 199. Did you know of a Capt. T. T. Chandler ever running as conductor on the Louisa Road.

A. I knew him very well.

R-D-Q. 200. Did he succeed Darracott there?

A. He did.

R-D-Q. 201. Have you ever asked any one to testify in this cause?

A. Never.

R-D-Q. 202. Have you ever inquired among your acquaintances or citizens of this section of country, to find any one who knew about this old car? 1242

A. No.

R-D-Q. 203. Have you any interest of any character in this cause in which you have been called to testify?

A. None.

R-D-Q. 204. When you have been enquired of or have talked with any person concerning this old sleeping car, has there been any attempt to put ideas about it into your mind?

A. None.

R-D-Q. 205. Is it or is it not the fact that when you were first asked if you remembered this sleeping car that you did remember it and described it, as you have done in your testimony? 1243

Objected to as incompetent.

A. I did remember it and describe it.

R-D-Q. 206. Did you remember and describe it at that time without suggestion from the party inquiring?

A. I did.

R-D-Q. 207. Was that before or after you had seen a model? 1244

A. Sometime before.

R-D-Q. 208. Do you remember whether or not there

were any cars on the R. R., while you were there, considerably shorter than this old sleeping car?

1245 A. I remember two four-wheeled cars much shorter than the old sleeping car.

R-D-Q. 209. You came here to testify at my request, and did not require me to have you subpoenaed, did you not?

A. I did.

R-D-Q. 210. Would you not willingly give your testimony concerning facts within your knowledge for any person, without requiring that you be subpoenaed?

A. I would.

1246 R-D-Q. 211. Have you been talked with about this old sleeping car except by Bragg, when he first called upon you; at the time you gave your affidavit, and when I called upon you to learn what you knew about it?

A. None others.

R-D-Q. 212. Did you understand X-Q. 166 to relate only to the fixed partitions between the berths, and not to what you have called head or foot boards, used with the folding out part of the lower berth?

A. It was the fixed partitions that I understood.

1247

RE-CROSS EXAMINATION.

R-X-Q. 213. If it should appear that you are mistaken about there being any partitions between the berths and that you are mistaken about the upper berths being hooked up to the ceiling of the car, and if it should appear to be the fact, that instead of partitions, there were posts supporting and separating the berths at their outer edge, and that the upper berth was fixed and not movable, would this in any way change your recollection that there was a sleeping car on that road, with a ladies' and gentlemen's apartment and with tiers of berths three high on each side of the car?

1248

A. It would not.

R-X-Q. 214. The next sleeping car or car with sleep-

ing devices in it, of any kind which you ever saw after the one you have described as running on the R., F. & P. Road, between 1841 and 1844, was the sleeping car you have stated to have seen on the Petersburg and Weldon Road, about the year 1852 or '53, was it? 1249

Objected to as incompetent, as not being proper re-cross examination.

A. It was

F. L. SWIFT.

The model Exhibit Richmond car was out of sight of the witness from and after question 56 was asked throughout the examination. 1250

Attest:

THOMSON H. PALMER,
Special Examiner.

Adjourned to to-morrow, Friday morning, August 19th, 1881, at 10 o'clock, A.M., at Newton's Hotel, Petersburg, Va. 1251

PETERSBURGH. VA. }
Friday, August 19, 1881, 10 o'clock A. M. }

Met pursuant to adjournment.

Counsel as before.

WILLIAM C. LUMSDEN, a witness produced on behalf of the Defendants, being duly sworn, testified as follows:— 1252

Q. 1. State your name, age, residence and occupation?

A. William C. Lumsden, age, 59 last January; residence, Petersburg, Va., and occupation pattern maker

1253 and machinist. I was formerly master car builder in charge of the car shops of the Petersburg R. R. I am now superintendent of the firm of Tappey & Steel, founders and machinists, of Petersburg.

Q. 2. How long and during what time were you engaged as master car builder for the Petersburg R. R. Co.?

A. From December, 1845, to January, 1851.

Q. 3. Had this R. R. at that time any other designation than Petersburg R. R.?

A. Yes; the Petersburg & Roanoke R. R. Co.

Q. 4. Between what points did it run?

1254 A. Between Petersburg, Va., and Weldon, North Carolina.

Q. 5. The same as it does now?

A. It goes between the same points now.

Q. 6. What was the first important work you did for this R. R. after you were employed by it?

A. Constructing two cars designed for sleeping cars.

Q. 7. Who directed you to construct them?

A. H. D. Bird, who was President and Superintendent of the Road at that time.

Q. 8. What instructions, if any, did he give you about their construction?

1255 A. They were to stand not over twelve feet from the track in height; nine feet wide, and as long as certain timbers he had ordered for these cars would allow; with regard to allowing sleeping accommodations for as many passengers as could be seated comfortably on seats on either side of the car.

Q. 9. Where is Mr. H. D. Bird?

A. He is dead, sir.

Q. 10. Who assisted you in the construction of these cars?

1256 A. Alexander Wright was one, William Butler, Thomas Sykes, Alexander Hansen,—Poland and William Jones, these were all that worked on those cars except the painter and trimmer.

Q. 11. Were both of these cars constructed alike?

A. They were, as near as they possibly could be.

Q. 12. Will you please describe the construction of these sleeping cars, built by you for the use of the Petersburg R. R., as its master car builder? 1257

A. The car was made sufficiently long to accommodate eight lengths of berths on either side. They were three tiers high; the lower berths were hinged to the side of the car and supported in a horizontal position by an upright board running lengthwise of the car about three inches from the front or inner edge of the berth. This board was supported by cross pieces attached to the side of the car and placed at such distances as to form supports for the ends of the berths? These berths were cushioned on top, and when the middle berth was let down formed seats. The middle berths were supported in a horizontal position by leather straps depending from knobs on the edge of the upper berths except where they were at the ends of the car, and partitions of the car, where they had bolts like door or window bolts which shot into mortises in the car ends and partitions. These were cushioned on the top in the same manner as the lower berths. 1258

The upper berths were hinged on the side of the car, and suspended on their front edges by rods secured to the carlines of the roof of the car, with a hole in the bottom end to slip over a knob on the front edge of the berth, which was also used for the strap of the middle berth. 1259

These rods were also used to hold the berths up against the carlines by slipping over a knob on the bottom or under side of the berth which secured it in that position, except where the ends of the berths came at the car ends or partitions of the car, when the same effects were carried out by door or window bolts shoving into mortises in the car ends and partitions. There were loose mattresses used on these berths which were held in place by a board on the edge of the berth. Twelve feet from one end of the car a partition was run across with a door in the middle separating that portion of the car for ladies' use. In one corner of this 1260

- ladies' apartment a water closet was partitioned off taking up the length of one berth, and had a short cushioned seat within it besides the water closet seat. On that side of the ladies' apartment there were three berths arranged one above the other, the two upper berths being held in position by bolts, similar to those used in the other parts of the car, shooting into mortises in each of those partitions. On the other side of the ladies' apartment there were six berths arranged one above the other exactly as the other berths in the gentlemen's end of the car. One end of each of these upper and middle berths were fastened by window or door bolts; the meeting ends of these upper and lower berths were held in position by rods and straps, as has been already described.

Q. 13. Please explain how the upper berths in these cars were arranged for the day use of the cars?

- A. The middle berths were let down against the side of the car, forming the back of the lower berths or seats; the upper berths were held up against the roof of the car by rods, with holes at the lower ends, slipping over knobs on the bottom of the berths, holding them up at an angle of about forty-five degrees, except at the car ends and partitions, where they were held up by bolts shooting into mortises in the ends of the car and partitions.

Q. 14. When these upper berths were raised and held up at an angle against the roof or carlines of the car, what supported their lowest or wall edges?

A. Hinges.

Q. 15. Hinges, how?

A. There were three hinges screwed into the side of the car and on the edge of each berth.

- Q. 16. Which edges of the upper berths went against the carlines when such berths were raised up at an angle?

A. The edge next the aisle, or passageway of the car.

Q. 17. Were there berths arranged on one or both sides of that aisle or passageway of the car?

A. On both sides.

Q. 18. Were the cushions of the middle and lower berths fast or loose? 1265

A. They were fast.

Q. 19. How were the upper berths arranged to be slept on?

A. The rods were unhooked from the knobs on the bottom of the berths, and when the berths were lowered the rods were slipped over the knobs on the edges of the berths, except where bolts were used, when they were drawn out of the upper mortises and shot into the lower mortises, provided for the purpose of keeping the berths in a horizontal position.

1266

Q. 20. What was the reason, if any, for having these upper berths in those cars hinged so that their front edges could be turned up against the carlines, and the berths fastened in that inclined position?

A. So that they would not be in the way of persons sitting on the lower seats.

Q. 21. Were there doors in each ends of the cars communicating with their central aisles or passageways?

A. There were doors in each end?

Q. 22. How did the straps "depending from the knobs on the edges of the upper berths" fasten to the middle berths or seat backs, when they were raised for use as berths? 1267

A. They had holes in the lower ends and were slipped over knobs on the edges of the middle berths.

Q. 23. What was done with these straps when the berths were arranged for day use of the car?

A. They were merely intended to be turned up between the upper berth and roof of the car, but I do not know whether they were put there or not?

Q. 24. You have described a set or section of three berths one above another, as being in the ladies' apartment, on the water closet side, with the two upper berths held in position by bolts shooting into mortises 1268

in each of those partitions, what do you mean by the
1269 two upper berths?

A. The middle and upper berth.

Q. 25. And what do you mean by this upper and middle berth being held by bolts shooting into mortises in each of these partitions?

A. There were bolts on each end of those two berths. One partition was the main partition across, dividing the ladies' apartment from the gentlemen's part; the other partition formed the inner end of the water closet.

Q. 26. And were the upper, middle and lower berths in this section isolated from other berths in the car by
1270 the closet partition at one end and the main dividing partition at the other?

A. They were.

Q. 27. Were they operated so as to be arranged for day and for night use as the other berths in the car, that is, did the outer edge of the upper berth turn up to the carlines for day use and down to a horizontal position for night use, and the middle berth turn down as a seat back and up to a horizontal position as a berth?

A. They were.

1271 Q. 28. I understand from your description that this particular set of berths had the middle berth fastened in its horizontal position, and the upper berth fastened in both its horizontal and raised inclined positions by a bolt at each end of each of these berths, which bolts at one end of these berths shot into mortises in the water closet partition, while the bolts at the other ends of these berths shot into mortises in the main dividing partition which formed the ladies' apartment. Am I right in that understanding?

1272

Objected to as leading.

A. You are right.

Q. 29. How were the middle berths attached to the car?

A. By three hinges to each berth screwed to the inner belt rail of the car and to the edges of the berth. This inner belt rail formed the inner side of the window sills projecting up some half an inch above the window sill so as to keep the water from running in? 1273

Q. 30. Was there anything beneath the lower berths?

A. A box or chest formed by the boards supporting the lower seat or berth. The side of the car formed the back, and the upright board formed the front, and the cross-pieces the ends of the box.

Q. 31. How many partitions were there in the car against which berths came?

A. There was one main cross partition twelve feet from one end, and the end partition of the water closet six feet from the same end. 1274

Q. 32. Did any berths come next to the ends of the car?

A. One end each of nine berths came next to the ends of the car.

Q. 33. Am I correct in understanding your testimony to show that the ends of the upper and middle berths which came against the car ends and these partitions were fastened to the same by bolts?

A. Yes. 1275

Q. 34. And the ends of the upper and middle berths that did not come against the car ends or these partitions, to have the rod and strap fastenings you have described?

A. Yes, sir.

Q. 35. What was a berth length in these cars which you say were eight lengths of berths long on either side?

A. They were six feet long, except where they came in contact with the partitions, where each one was half the thickness of the partition shorter. 1276

Q. 36. How many sets or vertical sections of berths were there in each car in which the rod and strap fastenings were used on the upper and middle berths?

A. Do you mean where they were wholly used?

Q. 37. I mean such berths having these fastenings at
1277 both of their ends.

A. There were four tiers on each side, making eight in all.

Q. 38. And how many having rod and strap at one end, and bolts at the other end?

A. Six tiers of those.

Q. 39. Did you lay off the window spaces of these cars to any particular size?

A. They were laid off with reference to the length of the berth, twenty-four inches from centre to centre of the posts, giving three windows to each berth space.

1278 Q. 40. How much vertical clearance was there between the berths when arranged to be slept on?

A. They were laid off to give about twenty inches between the berths. The upper one had a little more at the front edge and less at the back, but the average was about twenty inches.

Q. 41. What kind of a roof did the car have?

A. A circular top roof.

Q. 42. How much spring in the centre?

A. Twelve inch spring in the width of nine feet.

Q. 43. When was it that you constructed these cars
1279 you have described?

A. The first was built and put on the road in 1846; the second in the early part of 1847.

Q. 44. Did you ever use those cars, or either of them, as sleeping cars, while they were in use upon the road as such?

A. Three or four times while travelling on the company's business.

Q. 45. At night?

A. At night, yes.

Q. 46. Did you lie down in the berth, and if so, state
1280 which one, if you can?

A. I occupied the upper berth, because I preferred that.

Adjourned to 4 P. M.

4 P. M., resumed.

Q. 47. Where were the six tiers of berths located in the car, the upper and middle berths of which had rod and strap fastenings at one end and bolts at the other? 1281

A. Three were at the ends of the car, and three against the main partition between the gentlemen's apartment and the ladies. In the gentlemen's end of the car two tiers of these berths were against the end of the car, one on each side of the passageway. Two tiers were against the main partition separating the gentlemen's apartment from the ladies', one tier on each side of the passageway. In the ladies' part there was one tier against the end of the car, the other against the main partition separating the ladies' apartment from the gentlemen's. Both of these in the ladies' apartment were on the opposite side of the car from the water closet. 1282

Q. 48. How long were these sleeping cars run and used on the Petersburg R. R.?

A. I can't say exactly; but one or both were in use as sleeping cars on that road as long as any night trains were run on the road, up to the time that I left the road. 1283

Q. 49. Have you not recently constructed a model illustrating the construction of those sleeping cars built by you for and used upon the Petersburg R. R.?

A. There was one built under my direction very recently.

Q. 50. Will you produce it for use in this cause?

A. I produce it.

The said model is filed as an exhibit in this cause, and marked with the title of the cause and "Defendants' Exhibit 1284 Petersburg Car." Thomson H. Palmer, Special Examiner."

Q. 51. What part of those cars does this model represent?

1285 A. It represents four lengths of berths at the end containing the ladies' apartment, and on the side of that apartment containing the water closet. It shows two tiers of berths in the gentlemen's part, and one tier in the ladies' part between the water closet and the main partition.

It shows the car divided longitudinally, and exhibits one half of one side of the car. The model does not show the projecting platform or roof at the end of the car.

1286 Q. 53. How accurately does it represent the construction of the sleeping cars you built for the Petersburg Road as you have described, so far as it illustrates the cars?

A. It is an exact representation as near as I can recollect in every particular, on a scale of three inches to a foot.

1287 Q. 54. Did you not make an affidavit sometime last fall describing these sleeping cars you built and have now been testifying about, for the complainants in a cause then pending in the Circuit Court of the United States, for the District of Maryland, entitled, "George M. Pulman and Pullman's Palace Car Co. versus The Baltimore & Ohio R. R. Co.," said complainants being the complainants in the present cause?

A. I did.

Q. 55. Where is that affidavit?

A. I don't know.

Q. 56. Please examine the certified copy of an affidavit made by you and state whether it is a copy of that affidavit?

A. Yes, sir. I believe this is a copy of the affidavit I swore to.

1288

Said certified copy of affidavit is filed in evidence and marked "Defendants' Exhibit Complainants' Lumsden Affidavit."
Thomson H. Palmer, Special Examiner.

Q. 57. Does this affidavit in its descriptive matter of the cars contain a description of what you have termed in your deposition a ladies' apartment, divided by a main partition from the gentlemen's apartment, and the berths therein, and the one tier of berths and the water closet, shown between the main dividing partition and the end of the car in this model. If you find such description please read it? 1289

Objected to as incompetent, the paper itself showing its contents.

A. It does. I read as follows: "There were no partitions of any kind separating the bunks except a stationary board partition twelve feet from one end of the car, which formed a ladies' compartment. Upon one side of this compartment there were six bunks of three tiers each arranged exactly as above described, except that the end of the car and the stationary partition supported one end of the bunks, upon the other side of said ladies' compartment there was one tier of bunks, the remaining space being occupied by a 'Ladies' Saloon.'" 1290

Q. 58 If you can, please point out in the Exhibit "Petersburg Car," the one tier of bunks on the side of the ladies' compartment, the remaining space of which was occupied by a ladies' saloon, which you had in mind when you made that description in your affidavit? 1291

A. It was a tier of berths between the water closet and the main partition separating the ladies' compartment from the gentlemen's compartment, as shown in the exhibit.

Q. 59. "I am not certain that all the upper berths were so constructed originally, but they were so made shortly afterwards." What did you mean by that language in the affidavit? 1292

A. The upper berths in the first car were made stationary at first, being supported at the ends of the car and partitions by cleats screwed on; at the other ends

1293 of the berths by iron rods screwed onto the earlines and the bottoms of the berths. After running a few trips the conductors complained of them being in the way of persons sitting on the lower seats, and I received orders to have them altered, which I did in the way that has been already described.

Q. 60. Was the second car originally constructed as the Exhibit "Petersburg Car" shows?

A. It was.

1294 Q. 61. "They were run but a few months upon said road as sleeping cars, on account of change of schedule, and were then altered to the extent that the sleeping devices not useful for day service, were taken out, cross seats were put in one of them, adapting them to ordinary day service." Please explain what you meant by that statement in your affidavit?

1295 A. At the time these two sleepers were put on the road there was night running from both ends of the line, between Petersburg and Weldon, requiring two trains for night service, some months after the last car was put on the road, the schedule was changed so that there was an afternoon train starting from Petersburg in time to come back that night from Weldon, requiring only one sleeping car. About the same time a car was prepared to be attached to a freight train that ran in the day time, and I altered a side seat car by putting in cross seats for that service. This circumstance was in my mind when I signed that affidavit.

Q. 62. Do you recollect of ever taking out the berth accommodations or converting either of those sleeping cars to cross seat cars while you remained with the road?

1296 A. I am not very certain whether the one that I altered with cross seats was one of these sleeping cars or another car with side seats, but I am certain that as long as there was any night service on the road while I was employed there, one or both sleeping cars ran in that service.

Q. 63. How did these sleeping cars compare in their

width, height and length with the ordinary passenger cars running on the Petersburg Road at the time you built them? 1297

A. They were larger in every respect.

Q. 64. Was the affidavit which you were asked to execute for use in the Baltimore suit all written out when presented to you?

A. It was.

Q. 65. Who asked you to execute it

A. Alexander Hamilton.

Q. 66. Had he inquired of you about the facts before he brought the affidavit to you?

A. He showed me a statement. In reading it over I found that it was very different in its description of the sleeping car, from my recollection of it. He struck out such portions as I objected to, and the next morning brought me a statement as corrected, which I executed. 1298

Q. 67. Had you not communicated the facts concerning the structure of the sleeping cars you had built to counsel representing the complainants in the Baltimore suit sometime before the first statement you were asked to execute was presented to you?

A. Yes, sir; a general statement.

Q. 68. Do you know where the first statement alluded to is? 1299

A. I do not.

Q. 69. Who took it away?

A. I left it in Mr. Hamilton's hands.

Adjourned to 10 o'clock, A. M., to-morrow, Saturday, August 20th, 1881.

PETERSBURG, Va., Aug. 20th, 1881.

10 o'clock, A. M.

1300

Met pursuant to adjournment. Counsel appearing as before.

William C. Lumsden's testimony resumed.

Q. 70. Was there not a night service in at least one

direction on the Petersburg R. R., during all the time
1301 you were employed by it?

A. To the best of my recollection there was.

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 71. What was the length of the Petersburg R. R. between the cities of Petersburg, Va., and Weldon, N. C., between the years 1845 and 1850?

A. I have no certain knowledge on the subject, but believe the distance to be 62 miles.

X-Q. 72. Did not Mr. H. D. Bird give you careful
1302 and detailed instructions how to construct the sleeping devices of those two old sleeping cars you have described?

A. He told me what he wanted. I made drawings in accordance with what I believed he wished, and they were approved by him.

X-Q. 73. That is, he told you the kind and character of the sleeping devices which he desired to have built and arranged in the two-cars, and from Mr. Bird's description of what he wanted you made drawings thereof, and he approved them, and you then constructed the
1303 internal or sleeping arrangements of those cars from those drawings, was that it?

A. The directions were merely general. The devices were my own.

X-Q. 74. Mr. Bird told you to put tiers of three berths in these cars, did he not, one above the other?

A. I can only repeat what I stated before. He directed me to put berths enough in the car to accommodate as many passengers as could comfortably be seated on the side seats, or lower berths.

X-Q. 75. Do you not recollect, Mr. Lumsden, that
1304 Mr. Bird told you at that time that he had seen and rode in a sleeping car on the Richmond, Fredericksburg and Potomac R. R. several years before, and that he described this car to you and you made drawings from that description, and constructed the Petersburg car substantially from that description and those drawings?

Objected to as incompetent, irrelevant and immaterial, as calling for hearsay relative to the structure of a sleeping car not alluded to in the direct testimony. 1305

A. If he did I have no recollection of it.

X-Q. 76. Mr. Bird was the oldest and most prominent R. R. man with the largest experience in this vicinity from the time rail roads were built south of Washington, until many years thereafter, was he not?

A. I have no personal knowledge on this subject.

X-Q. 77. In what years did you build those two sleeping cars?

A. The first was built and put on the road in 1846; the second one early in the succeeding year—1847. 1306

X-Q. 78. How far apart were the carlines of each of those two cars.

A. They were twenty-four inches from center to center, immediately over the side posts of the car.

X-Q. 79. That was a considerably greater distance apart than the carlines usually were in those days, was it not?

A. I can't say; I don't recollect. The object was to get the roof as light as possible, consistent with the proper support, and I considered that distance close enough for the purposes desired. 1307

X-Q. 80. Don't you recollect that sixteen inches apart was the usual distance for carlines fastened to cars during the years 1846 and 1847?

A. I do not. The practice at that time in our shops was to put the carlines immediately over the side posts of the car.

X-Q. 81. Were the carlines of these two old sleeping cars any larger or heavier or stronger than the carlines of the ordinary passenger car of the years 1846 and '47? 1308

A. I can't say. They were about two inches or two and a quarter by two and a half deep in these sleeping cars?

X-Q. 82. How wide?

1309 A. About two inches or two and a quarter thick, by two and a half deep.

X-Q. 83. Of what material were they made?

A. They were ash.

X-Q. 84. In your opinion now as a skilled mechanic, would carlines such as you have above described, of no greater thickness or strength, hold up and support four persons riding over a rough R. R., the object being, as you state, in a R. R. car to make the roof as light as possible?

1310 A. The arched form of the carlines supported at the ends and cross-partitions as they were, made them sufficiently strong, which was proved by their subsequent usage.

1311 X-Q. 85. Yes I can see that the cross partition could readily hold up the partition ends of two of the berths, but from your description there were a number of berths in that car two deep which were supported from the carlines of the car as you have described. these carlines being twenty-four inches apart, now don't you know, as a skilled mechanic, that such carlines as you have described that distance apart, would not hold up and sustain four bodies riding over a rough railroad track. The object, as you say, of carlines being to make the roof as light as possible and to furnish only strength enough to support the roof and not four or eight heavy bodies every six feet, through the length of the car?

Objected to as deceptive and misleading, the witness not having stated that the carlines were only given strength enough "to support the roof and not four or eight heavy bodies."

1312

A. I did not say that the carlines were made only for the support of the roof. They were made strong enough for the purposes they were intended to serve, and they fulfilled those purposes.

X-Q. 86. Don't you know, Mr. Lumsden, that the carlines to which these depending rods were attached in these two old sleeping cars, were much deeper and stronger than the ordinary carlines of that day, and were made so with the especial purpose of sustaining the heavy strain which would come upon them from both sides of the car when the four upper berths were occupied, or the eight upper berths upon each side of one carline? 1313

A. I have already described the shape and size of the carlines.

X-Q. 87. And do you still want to be understood as testifying that those carlines only extended down into the car two and a half inches? 1314

A. I think I said two and a half or two and three-quarters, certainly not over three inches in depth.

X-Q. 88. Will you swear positively that the carlines of these two sleeping cars were not five inches in depth?

A. To the best of my recollection they were not over three inches.

X-Q. 89. What other object had the carlines of a passenger car in 1846 and '47, except to hold up the roof of the car? 1315

A. To hold the two sides in their proper position.

X-Q. 90. And no other object?

A. Support the roof and hold the two sides of the car in their proper position. Your question was for general passenger cars, as I understood it.

X-Q. 91. Was there any water closet in the gentlemen's apartment of either of these two sleeping cars?

A. There was none.

X-Q. 92. Was there any stove in the gentlemen's apartment?

A. Only one stove was used to heat the car, and that was placed about the centre of the car, in the gentlemen's apartment. 1316

X-Q. 93. At the side of the car or in the aisle?

A. In the middle of the aisle.

1317 X-Q. 94. You are just as confident, are you not, that there was no stove in the ladies' apartment, and no place for a stove, as you are of any other fact of your testimony, are you not?

A. I have no recollection of any stove being placed in the ladies' apartment of these cars.

X-Q. 95. Would you swear positively that the water closet in the ladies' apartment was over three feet long, and would you swear positively that there was not a stove between that water closet and the tier of berths nearest the water closet on that side of the car in the ladies' apartment?

1318 A. My statement previously given answers the first question, and, as a consequence, the second also.

X-Q. 96. Did you ever sleep in or use any of the berths in the ladies' apartment of either of those two sleeping cars?

A. I don't know about sleeping, but I went in one or both of them some three or four times on the business of the road and occupied a berth each time.

X-Q. 97. In the ladies' or gentlemen's apartment?

A. The gentlemen's apartment.

1319 X-Q. 98. The only object in the building of that water closet in the ladies' apartment of either of these two old cars was for the purpose of having it used as a water closet and retiring room for the ladies in that car, was it not?

A. Yes, sir.

X-Q. 99. How many hours ride was it between Petersburg and Weldon, on that road in the years 1846 and '47?

A. I don't recollect the schedule time required, but believe it took from four to six hours between Petersburg and Weldon.

1320 X-Q. 100. How high were these two old sleeping cars, or what distance was it between the floor and the under side of the earlines and the car on the wall side?

A. As near as I can recollect they were six feet and a half on the outer wall of the car between the floor and

the lower edge of the carlines, and it required that amount of space to give the accommodation desired in the berths. 1321

X-Q. 101. How high were these two cars at their center from the floor to the under side of the car?

A. They were just twelve inches higher in the center than on the sides.

X-Q. 102. The only object there was in building that partition in those two old sleeping cars twelve feet from one end, was to divide and form those cars into two apartments, as I understand you, is that so?

A. So I understood.

X-Q. 103. When the door leading from the gentlemen's to the ladies' apartment was closed, were the two apartments then completely shut off and isolated from each other? 1322

A. That was the intention.

X-Q. 104. How far was it from the under side of the carlines of those two cars at their point of junction with the sides of the car to the point where the upper berths of those two cars were hinged to the side of the cars?

A. I think they were eighteen inches.

X-Q. 105. What kind of rails formed the track of that road during the years 1846 and '47? 1323

A. It was what was called strap rail spiked on wooden stringers.

X-Q. 106. What was the width of the upper berths of those two old sleeping cars?

A. Twenty-four inches.

X-Q. 107. And the middle berth?

A. That was twenty inches.

X-Q. 108. And you are confident that the upper berth was four inches wider than the middle berth?

A. I am.

1324

X-Q. 109. How wide was the lower berth?

A. Twenty-four inches.

X-Q. 110. Did you ever see any of the berths in the

ladies' apartment of either of these two cars in use for sleeping purposes?

1325 A. I can't say that I ever did.

X-Q. 111. How high was the lower berth or seat of these two cars from the floor to its top side?

A. To the top of the cushion, I think, was about seventeen inches.

X-Q. 112. You have testified as to and recognized a certified copy of a certain affidavit made by you on behalf of the complainants in the case of George M. Pullman, *et al*, vs. The Baltimore & Ohio R. R. Co. You made a model for the complainants representing
1327; one section of that sleeping car, and referred to it in your affidavit, did you not?

A. Yes.

X-Q. 113. Please look at this model now shown you with a card attached to it, entitled as last mentioned, with your name written thereon, and state if this is the model constructed by you at that time and referred to in that affidavit?

A. This is it, and this is my signature on the card attached to it.

X-Q. 114. You had made another model just like
1327 this, and upon behalf of the defendants in that case before you made the model just shown you?

A. I had.

X-Q. 115. You had also made an affidavit for the defendants prior to the date of your making one for the complainants?

A. I had.

X-Q. 116. You state that there was an affidavit brought to you written out by Mr. Alexander Hamilton; that you objected to it and he changed it to suit your objections; can you state in what particular, if at all, that draft of that affidavit shown you by Mr. Hamilton differed from the affidavit as actually signed by
1328 you?

A. I can't recollect exactly the wording of the first affidavit shown to me by Mr. Hamilton, I can only say

that a large portion of it was struck out as not being in accordance with my recollection.

X-Q. 117. Can you recollect a single important particular that was in the draft of the affidavit that was not in the affidavit signed by you ; or can you state any material change that was made in the affidavit as signed by you from the draft shown you by Mr. Hamilton ?

1329

A. I didn't charge my memory particularly with the substance of that first draft, but I think posts were mentioned as being put in the car to support the berths. This is the only item that comes to my mind at present.

The notary is requested by complainants' counsel to identify the model last testified to by the witness by marking the same upon the reverse side of the attached card, "Complainants' Exhibit Lumsden Car."

1330

Defendants' counsel demands that the draft of affidavit concerning which the witness was last questioned about, be produced by complainants' counsel, and properly identified as an exhibit in this cause.

1331

Complainants' counsel states that he recognizes no right to any such demand, much less any legal right for its production in this form ; but complainants' counsel states that he has no doubt but that Mr. Hamilton, who is a reputable attorney of high standing in this city, will produce such draft if he has it, for the inspection and use of defendants' counsel, or if he has it not, will go upon the stand and testify as to its contents.

1332

X-Q 118 Did you personally make the large model

exhibit "Petersburg Car," or was it made under your direction?

1333 A. I did not; it was made under my direction.

Adjourned to 3 o'clock, P. M.

3 o'clock, P. M., resumed.

X-Q. 119. How high were the window sills from the floor of the car in those two old sleeping cars?

A. About thirty-six inches.

RE-DIRECT EXAMINATION.

1334

R-D-Q. 120. You state in the affidavit "Complainants' Lumsden Affidavit," referring to the upper berths, "that when not used for berths the aisle edges were raised up against the ribs of the roof and held there by the lower ends of rods slipping over buttons or knobs on the bottom of berths so placed as to keep them up." In the model "Complainants' Exhibit Lumsden Car" the rod represented does not hold the upper berth with its edge against the ribs or carlines. Will you explain why the affidavit and its accompanying model did not agree in this particular?

1335

A. The model only gave a general idea of the way the berths were attached to the car. It did not pretend to be a very accurate copy in every particular of the different parts used in its construction.

R-D-Q. 121. Did you consider it a fair representation of one section of the sleeping cars you built, and of the mode of hanging and adjusting the berths in connection with the descriptive matter in your affidavit?

1336

Objected to as leading and incompetent, the contents of the affidavit, according to the statement of the witness, being drawn by a lawyer and the model which purported to represent the facts being made by himself.

A. I did.

R-D-Q. 122. This "Complainants' Exhibit Lumsden Car" does not appear to be made to a scale. Was it intended to show the dimensions of the car accurately? 1337

A. By no means.

R-D-Q. 123. What particular section of berths in the cars themselves does this "Complainants' Exhibit Lumsden Car" represent?

A. The section abutting on the end and partition of the gentlemen's apartment, and also the section of the ladies' apartment opposite the water closet next to the main partition.

R-D-Q. 124. Does it not illustrate all the kinds of berth fastenings used in the cars. 1338

A. It does.

R-D-Q. 125. Designate in the Defendants' Exhibit "Petersburg Car" any one of the sections named in your answer to R-D. question 123, if you find such an one?

A. The middle section of berths shown in that model.

R-D-Q. 126. Did the draft of affidavit first brought to you on behalf of the complainants, state or imply by its language that there were no partitions between berths anywhere in the sleeping cars you built as testified by you? 1339

Objected to as incompetent.

A. As I stated before, I did not charge my memory with its exact language. It was only read to me once and I therefore cannot recollect much about it.

RE-CROSS EXAMINATION.

R-X-Q. 127. You made this model referred to in your affidavit and marked here "Complainants' Exhibit Lumsden Car" before you made the affidavit, did you not? 1340

A. I believe I did, sir.

WM. C. LUMSDEN.

Attest :

1341 THOMSON H. PALMER,
Special Examiner.

Adjourned to Monday, Aug. 22, 1881, at
10 A. M.

PETERSBURG, Va., August 22, 1881. }
10 o'clock A. M. }

Met pursuant to adjournment, counsel
as before.

1342

ALEXANDER WRIGHT, a witness produced on behalf of
defendants, being duly sworn, deposes and says as fol-
lows :

Q. 1. What is your name, age, residence, and profes-
sion ?

A. Alexander Wright, age 67, will be 68 next month,
residence Petersburg, Va. I am a carpenter and car
builder.

Q. 2. Where were you employed in 1846 and '47 ?

A. In the Petersburg R. R. shops as a car builder.

1343 Q. 3. How long did you remain in the employ of the
Petersburg R. R. Co. as car builder ?

A. From 1844 to 1876.

Q. 4. Were you not its master car builder for a time ?

A. Yes ; from 1851 up to '76 ; I succeeded Wm. C.
Lumsden when he left.

Q. 5. Do you remember any sleeping cars being built
in that Company's shops in 1846 and '47 for use upon
its road ?

A. Yes, sir ; two.

Q. 6. Were they constructed alike ?

1344 A. Yes, sir.

Q. 7. Will you please describe the construction and
operation of those cars ?

A. They were larger and wider and higher cars than
any we had at that time ; they were about 48 feet long,

about 6 feet 6 inches from the floor to underneath the carlines high at the sides, at the middle they were about 7 feet 6, the carlines being very rounding, about 12 inches at the middle of the car. They had berths on the sides three in height, bottom, middle, and top berths on both sides of the car. At one end of the car there was about 12 feet cut off for a ladies' room, two berths in length; on one side of this ladies' apartment there was a water closet and a short berth and another long berth, and on the opposite side there were two berths the whole length. I mean by short berth the little seat in the water closet. This ladies' apartment was cut off by a partition all the way across the car, with a door in the center. There were six berths in length in the gentlemen's apartment on each side of the central passageway. 1345

The lower berth was, I suppose it was, some 14 inches from the floor and about 2 feet wide and about 6 feet long. It was supported by the side of the car by hinges and rested on the box underneath it. The middle berth was about the same length, and that was hinged to the side of the car near the belt at the lower edge or sill of the windows; it answered as a back for the lower berth when it was let down, and when raised acted as a berth. 1346

The upper berth was the same length and was hinged to the side of the car at its back edge next to the car side. When not in use it was raised up to this carline, that is, its front edge went up to the carlines. The top berth was held up when in its horizontal or sleeping position by rods fastened to the carlines and extended down and fastened to the berth by a button, or hook, on the edge of the berth. The middle berth when raised to its horizontal position was supported by straps fastened to the edge of the top berth by a button or hook, and to the middle berth by a button or hook on the edge of said berth. 1347

To put these berths in position for day use, the middle berth was taken loose from these straps and let down and swung against the car side as a back for the seat. The upper berth was unhooked and raised up to 1348

1349 the carlines and the rod was fastened to a hook or button on the face of the top berth. The same rod which was unhooked came onto the face of the berth and fastened to a hook or button on the face of the berth. The upper berth, when raised up, the face stood up at an angle or inclination against the carlines.

Q. 8. Were there any other kind of fastenings for the berths?

A. I don't recollect any other kind of fastenings except at the ends of the berths where they went against the partitions, they were fastened with a bolt. There was a plate screwed onto the partitions with a hole cut into
1350 the plate for the bolt to go in.

Q. 9. Was this bolt fastening used at the ends of the upper and middle berths whenever they came against the car ends or partitions?

A. Yes, sir.

Q. 10. Do you remember whether or not the upper and middle berths of the set of berths in the ladies' apartment between the partition which cut off the ladies' apartment and the water closet had bolts at both their ends for securing the berths?

A. Yes, sir, they had.

1351 Q. 11. Whether or not the bolts at one end went into the cutting off partition and at the other into the water closet partition?

A. Yes, sir, they did.

Q. 12. Any pillows or blankets provided for the berths in these sleeping cars?

A. Yes, sir; both pillows and blankets.

Q. 13. Did these berths have mattresses?

A. Yes, sir.

Q. 24. Fast or loose?

1352 A. The top ones were loose and the others were fast.
Q. 15. What kept the mattresses in the upper berths from falling out when the cars were in motion?

A. They had a strip screwed on the front edge.

Q. 16. How long did these two sleeping cars remain in use upon the road?

A. I could not say exactly how long, but they were in use several years after I took charge. 1353

Q. 17. You mean from the time they were built until some years after you took charge?

A. Yes, sir.

Q. 18. Up to what time with respect to the war of 1861 did they continue in use?

A. I suppose they remained in use up to 1853 or '54, or longer.

Q. 19. Do you know what became of them?

A. I took the berths out and put in cross seats. I mean both of them. We used both of them in the first part of the war, as passenger cars to carry soldiers until the road was cut by the soldiers. 1354

Q. 20. Did you ever ride in either of them when they were in use for sleeping purposes?

A. Yes, sir; I was in them a great many times, I used to go in them most every day; that is, I don't mean that I rode in them every day.

Q. 21. I mean while they were in use as sleeping cars do you remember ever having been in them so as to see persons using them to lie down in?

A. Yes, sir; I have been out on the road and seen them used as sleeping cars. 1355

Adjourned to 2 o'clock, P. M.

2 o'clock P. M. resumed.

Q. 22. Please look at the model Defendants' Exhibit "Petersburg Car," now shown you, and state whether or not you ever saw sleeping cars constructed and operating like said model?

A. Yes, sir; this is the indential thing—like the sleeping cars that were built in 1846 and '47, at the Petersburg shops, as I have testified. 1356

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 23. You have seen this model before it was shown you to-day, have you not?

A. Yes, sir; I saw it once before.

1357 X-Q. 24. You made an affidavit for the defendants in the case of George M. Pullman and others vs. the Baltimore and Ohio R. R. Co., in the fall of last year, 1880, did you not, about these same two old sleeping cars?

A. Yes, sir.

X-Q. 25. You saw and examined a model representing one section of those two old sleeping cars and made by Wm. C. Lumsden of this city, at the time you swore to that affidavit, did you not?

A. Yes, sir; I don't know whether it was made by Wm. C. Lumsden or not.

1358 X-Q. 26. How wide was the middle and top berths in those two old sleeping cars?

A. I think they were about two feet, they may not have been quite that wide.

X-Q. 27. The middle and top berths of those two old sleeping cars were both of the same width, were they not?

A. I don't recollect whether they were both exactly of the same width or not. The top one and bottom one were both the same width.

1359 X-Q. 28. Did you ever ride, or sleep, or see in use any of the berths in the ladies' apartment of either of those two cars?

A. I have rode on the cars but I never went in the room when there was ladies in there. I have seen them asleep in the gentlemen's part.

X-Q. 29. Where are those two old sleeping cars now—the cars themselves as they were after the cross seats were put in them?

1360 A. Well, sir, I took one to pieces to get the iron work, and the other one I sent down to the gravel bank in 1876, a month or two before I left the road, for the hands to stay in at the gravel bed, at the twenty-four turnout on the Petersburg Road, four miles below Stoney Creek.

X-Q. 30. Did you leave the partitions in those two old sleeping cars, which formed the gentlemen's and ladies' apartment, at the time you remodeled them and put in cross seats?

A. No sir. I took them out.

X-Q. 31. Did you take out the water closet at the time you remodeled the cars? 1361

A. Yes, sir; I took the water closet out and put in another one right in the corner.

X-Q. 32. How close together were the carlines of those two old sleeping cars?

A. They were about two feet from center to center.

X-Q. 33. Have you seen or had read to you or been told the contents of the testimony or deposition of Mr. W. C. Lumsden about those two old cars in this case?

A. No, sir; I have not.

X-Q. 34. Do you desire to be understood as swearing positively that the front edges of those upper berths came in contact with the under side of the carlines of those cars? 1362

A. Yes, sir; they raised up to the carlines.

X-Q. 35. There was plenty of room, was there not, between the front edges of these berths when turned up, and the roof of the car to stow away satchels, umbrellas, and small parcels of that kind, is not that so?

A. Yes, sir; any small thing. There was about eighteen inches on the back from the hinges of the berths to the bottom of the carlines, and you couldn't put any large package in there. 1363

X-Q. 36. Those carlines had to support the weight, by their rods and straps, of eight persons, four on each side of the car, whenever the middle and upper berths were filled, did they not?

A. I don't exactly understand, did you mean two berths on one side and two on the other.

X-Q. 37. No. I mean four berths on each side, a person to each berth, one end of all of those four berths on each side of the car being held up by one carline? 1364

A. Yes.

X-Q. 38. The ordinary and usual distance apart of the carlines of passenger cars in the years 1846 and '47 were 16 inches, was it not?

A. I don't recollect.

1365 X-Q. 39. The carlines of those two old sleeping cars having to hold up heavy weights, being drawn over rough roads, were much deeper and stronger than the carlines of ordinary passenger cars of that day, were they not?

A. Yes; I think about three inches or a little more deep.

X-Q. 40. Will you swear positively, Mr. Wright, that the carlines which held up and supported those eight berths, four on a side, were not eight inches in depth and two and one half or three inches in width.

1366 A. Yes, I know they were not eight inches in depth.

X-Q. 41. Do you know they were not six inches in depth?

A. Yes, sir.

X-Q. 41½. Will you swear they were not five inches in depth?

A. I don't think they were five inches, didn't exceed more than three and a half at the furthest.

X-Q. 42. Those upper berths in those two cars were built stationary at first, were they not, not hinged to the side of the car?

1367 A. Yes, sir.

X-Q. 43. And you are quite confident, are you, that some of the upper berths, if not all, of each of these two old sleeping cars were afterward changed so that their front edges could be lifted up toward the carlines?

A. Yes, sir; they were all changed and hinged—all the upper berths, I mean.

X-Q. 44. The only reason there was for hinging the upper berths so that they could be turned up was to get those upper berths out of the way of the heads of the
1368 passengers; is not that so?

A. Yes, sir.

X-Q. 45. Was there any stove in the ladies' apartment of those cars?

A. No, sir.

X-Q. 46. Mr. H. D. Bird, the President of the Peters-

burg & Weldon Road in 1846 and '47, planned and designed the construction of these two sleeping cars, did he not? 1369

A. I reckon he did. At that time I was just working as a journeyman, and did not know about Mr. Bird's business.

RE-DIRECT EXAMINATION.

R-D-Q. 47. Did you not fully explain the construction and operation of those sleeping cars you have testified about on the day before I brought this model and showed it to you?

A. Yes, sir.

R-D-Q. 47½. Do you not at this time clearly remember those sleeping cars themselves? 1370

A. I do.

R-D-Q. 48. You say you took out the water closet and put in another right in the corner when you altered these sleeping cars to cross seat cars. What was the object in taking out one water closet and putting in another in the same place?

A. The original one took up six feet, and I put in one that took up three feet. I wanted to get the room.

R-D-Q. 49. Did you ever hear as a reason for hinging the upper berths in those cars that when they were stationary they were found to be in the way of passengers walking through the car? 1371

A. Yes, sir.

R-D-Q. 50. Your answer to X-Question 43 makes it appear that both of the cars were originally constructed with stationary upper berths, afterwards hinged. Did you mean both cars.

Objected to as an attempt to induce witness to change his answer to a question concerning which there could be no misunderstanding. 1372

A. No, sir; I meant the first one was changed. We changed that before we built the other.

1373 R-D-Q. 51. Your answer to X-Question 35 makes it appear, from its obscurity, that when the upper berths had their front edges turned up against the carlines there was room enough between the edges of the berths and the roof to pass satchels and small parcels over that edge and behind the berth, is that what you meant to say.

Objected to as incompetent and as suggesting a desired answer for the witness instead of calling for an explanation.

1374 A. No, sir; I meant it would hold them if you put them in the berth and then raise it up, but I don't mean you could put them over in there after it was raised up.

ALEX. WRIGHT.

Attest :
THOMSON H. PALMER,
Special Examiner.

Adjourned to 10 A. M., August 23d, 1881.

1375

PETERSBURG, August 23, 1881, 10 A M.

Met pursuant to adjournment, counsel as before.

WILLIAM C. BUTLER, a witness produced on the part of defendants, being duly sworn, deposes and says as follows :

1376 Q. 1. What is your name, age, residence, and occupation?

A. William C Butler, age 63 next January, residence, Petersburg, Va., occupation, pattern maker.

Q. 2. Were you ever employed by the Petersburg R. Co., and from when to when?

A. I was, from 1843 to 1861.

Q 3. Between what cities does that R. R. extend? 1377

A. Petersburg, Va., and Weldon, N. C.

Q. 4. Did you ever know of that R. R. Company having sleeping cars constructed and used upon it?

A. Yes, sir.

Q. 5. How many?

A. Two.

Q. 6. When were they built?

A. They were built in '46, '47, '48, along there; one was built in '46 or '47, and the other, I think, was finished off in '47 or '48

Q. 7. Did you work upon those cars during their construction? 1378

A. I did.

Q. 8. Please describe their construction and operation more particularly as to the berths?

A. The car was an unusually long car for those days and wide. The lower seat was hinged to the wall of the car and rested on a box below it. The middle berth was hinged to the belt-rail, and when down, acted as the back to the bottom seat. The top berth was hinged to the side of the car and supported by an iron rod with an eye in one end of it that went over a knob on the end of the aisle edge of the berth. The middle berth when up for any person to sleep on was supported by the top berth and a strap. That was the general way of fastening up the berths, but where they came to the partitions on the end of the car, there was thumb bolts in place of the rod, which ran into a mortise in the face of the partition. 1379

Q 9 How were these berths arranged with respect to the sides of the car?

A. They went lengthwise of the car.

Q. 10. Along the sides or in the middle? 1380

A. Along the sides.

Q. 11. Was there any passageway in the center of the car?

A. Yes, sir; what they call an aisle, in the center.

Q 12 Was the car divided into apartments for ladies' and gentlemen's use?

1381

A. There was a partition across to divide the ladies' and gentlemen's apartment, a door in the middle of the aisle.

Q 13 How many sets of berths were there in the ladies' apartment on both sides of the aisle?

A. There were three, one on the side of the water closet and two on the opposite side.

Q 14. Where was the water closet?

A. It was in one corner of the ladies' apartment.

Q 15 And where was the set of berths on the water closet side of the ladies' apartment?

1382

A. It was on the side of the car next to the water closet.

Q. 16. Did they go against the water closet at one end?

A Yes, sir; and against the partition at the other end.

Q 17. How were the upper and middle berths of this set of berths between the water closet and car-dividing partition held in their up and down positions?

A. By thumb bolts and a mortise in the partition.

Q. 18. How were the upper berths arranged to be slept in—I mean in what position?

1383

A. In a horizontal position.

Q 19 How were the upper berths arranged when not to be slept on?

A They were raised up against the curving of the roof and supported by the rods that held them in a horizontal position by a knob on the face of the berth near the bottom, which the rod hooked into. The bolts in the partitions were also used.

Q 20. We call the ribs or rafters of car roofs now days carlines?

1384

A. In them days we used to call them curves.

Q 21. Did the upper berths stand horizontally in the day use of the cars?

A No, sir; they were fastened up against the roof,

at an angle of forty-five degrees, or something of that kind.

Q. 22. What part of them went against the roof or its carlines? 1385

A. The aisle edge

Q. 23. Did it go snugly against the carlines?

A. Yes, sir.

Q. 24. What kind of cushions on the middle and lower berths, fast or loose?

A. They were fast.

Q. 25. Did the upper berths have mattresses, and were they fast or loose?

A. They were loose mattresses.

1386

Q. 26. What kept them from falling out when the berths were in a horizontal position and the car was running on the road?

A. A moulding or strip on the aisle edge of the berth.

Q. 27. Were both cars alike in their construction?

A. Yes.

Q. 28. Any pillows or blankets provided for the berths?

A. Pillows, but no bed clothing.

Q. 29. When the upper berths were turned up into the angular position during the day use, were the pillows and mattresses shut up in the space behind the berths? 1387

A. The mattresses was, but the pillows, as a general thing, were all thrown in the box below the seat.

Q. 30. There was plenty of room behind the upper berths when raised up to put the pillows there, was there not?

A. Yes; there was room there.

Q. 31. Did the set of berths between the main cross-partition and the water closet partition have their ends fitted close to those partitions? 1388

A. Close enough to allow them to raise up without being tight.

Q. 32. You mean without being too tight to prevent their being easily raised and lowered, do you not?

A. Yes.

1389 Q. 33. Did you assist in altering these two cars into ordinary passenger cars?

A. I think I did. I know they were altered, but I can't recollect whether I assisted or not.

Q. 34. When was this alteration made?

A. Well, I can't say what year.

Q. 35. How near the time you left the employ of the road was it?

A. Well, I suppose some one or two years before I left the road.

1390 Q. 35. Were these cars run as sleeping cars on that road from the time they were built until they were altered to ordinary passenger cars?

A. They were.

Q. 37. Did you ever see passengers using those cars as sleeping cars.

A. Yes, sir.

Q. 38. What kind of a roof did these cars have, was it flat or round?

A. Round.

1391 Q. 39. Please look at the model exhibit "Petersburg Car," now shown to you, and say whether or not you ever saw sleeping cars constructed and operating like it so far as the portion of the car it illustrates is concerned?

A. Yes, sir; on the Petersburg Road, the ones I have been testifying about.

Q. 40. How correct a model is that of those o'd sleeping cars?

A. Well, sir, I should call that a good model of those cars.

Q. 41. What was the length of the berths?

A. About six feet.

1392 X-Q. 42. How come you to leave the employ of the Petersburg R. R. in 1861?

A. I went in the army.

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 43. You made an affidavit last fall in regard to the construction and operation of those two old sleeping cars on the Petersburg Road, did you not? 1393

A. I did.

X-Q. 44. That affidavit was made in a suit of George M Pullman *vs.* The Baltimore & Ohio Road, was it not?

A. At that time, sir. I did not know what road it was.

X-Q. 45. That was the only affidavit you ever made about those two old sleeping cars?

A. Yes, sir.

X-Q. 46. At the time you made that affidavit you examined a model showing one section of those old sleeping cars, did you not? 1394

A. I did.

X-Q. 47. And you swore in that affidavit that that model was a true and exact representation of one set of berths of those two old sleeping cars, did you not?

Objected to as incompetent, irrelevant
and immaterial.

A. A fair representation.

X-Q. 48. Just as fair a representation of one section of those two old sleeping cars as represented by any one section of this large model, was not it? 1395

A. Well that model, there was no scale to that model, and of course there was nothing correct about the thing. There was no scale about it, but it was a fair representation of that section.

X-Q. 49. How do you know there was no scale to it; did you measure it; and how do you happen, a year afterwards, to make your oath that that model you swore was a model of one section of that old sleeping car was not made to a scale? 1396

A. No, I did not measure it.

X-Q. 50. Just explain to the court then how you now swear under oath that that model was not made to a scale, if you did not measure it?

A. Well, I didn't measure it, and therefore I did not

think it was made to any kind of a scale at all—just gotten up in a rough way.

1397 X-Q. 51. You don't know whether it was made to a scale or not, do you?

A. I am of the impression it was not.

X-Q. 52. Do you know anything about it of your own knowledge whether it was made to a scale or not?

A. I don't.

X-Q. 53. Do you know whether this large model before you is made to a scale or not?

A. I do not.

1398 X-Q. 54. You have seen that small model of one section that you swore to last fall, or one just like it, within a few days past, haven't you?

A. I have not.

X-Q. 55. Have you talked to anybody within a few days past about that small model in any respect?

A. I have not.

X-Q. 56. For all you know that small model was made to just as much of a scale as this large model is, wasn't it?

A. May be so.

1399 X-Q. 57. Who got you to make that affidavit last fall in regard to the construction of those two old cars?

A. I forget; the man's name was Worden, I believe, or something like that.

X-Q. 58. You swore in that affidavit, did you not, that those two old sleeping cars were only used as sleeping cars for a year or two, and then they were used as day cars, the schedule of the road being changed?

Objected to as incompetent, irrelevant and immaterial

1400

A. I don't know how long they ran as sleeping cars. As long as they ran night trains.

X-Q. 59. Will you swear that those two old sleeping cars ever ran as sleeping cars over one year on that road?

A. Well, I don't care to swear to that, because I don't know how long they ran.

X-Q. 60. Did you ever ride in the ladies' apartment of either of those sleeping cars during the few months or a year they were used as sleeping cars and not day cars? 1401

A. No I never was that I know of.

X-Q. 61. You don't know anything about then the actual use of the berths for sleeping purposes in the ladies' apartment of either of those two cars?

A. Not in the ladies' apartment. No.

X-Q. 62. Who made that small one-section model that you swore to last fall?

A. I do not know.

X-Q. 63. Mr. William C. Lumsden, of this city, made that model, did he not? 1402

A. I didn't see anyone make it.

X-Q. 64. The berths of those two old sleeping cars were of what width?

A. About two feet, I think, sir; that was the usual width for a man to lie on.

X-Q. 65. Don't you know that that upper or top berth was only twenty inches wide?

A. No; I don't know it.

X-Q. 66. Do you know how wide it was? 1403

A. The same width of the balance, I suppose.

X-Q. 67. The top berth and middle berth were of the same width, were they?

A. I think there was a difference between the top berth and the middle berth, the middle berth was a little the narrowest, on account of the room under the windows.

X-Q. 68. Who put that idea into your head about the middle berth being a little the narrowest?

A. Any mechanic that knows anything about building a car would know it—put it in his own head, if he knows his business. 1404

X-Q. 69. You swore in that affidavit you made last fall that the lower seat was twelve inches from the floor in those two old sleeping cars, didn't you?

Same objection.

1405

A. Well, I disremember now.

X-Q. 70. Well, how far was it then?

A. Well, sir, I don't know; 12 or 13 inches or thereabouts, the usual height for a man to sit on.

X-Q. 71. How high was the window sills of those two cars from the floor?

A. I don't remember.

X-Q. 72. The usual height of window sills in passenger cars from the floor in those days was 40 inches, wasn't it?

1406

A. I don't remember.

X-Q. 73. There would have been no difficulty in having a middle berth 30 inches wide hinged directly flush with the window sills so as to drop down and form the back of the seat, would there of those two old sleeping cars?

A. There would have been no difficulty, which I know of, provided there was room enough.

X-Q. 74. And there was room enough, wasn't there, in those two old sleeping cars to hinge a berth 30 inches wide beneath or flush with the window sills, and drop it down so as to form the back of the seat?

1407

A. That is something I don't remember.

X-Q. 75. Don't you know that the middle berth in those two old sleeping cars was wider than the top berth when it was in position for sleeping?

A. No, I do not.

X-Q. 76. As a matter of fact, you don't know anything about it, whether it was wider or the same width or narrower than the upper berth?

A. As I said before, I am under the impression that it was narrower, it would make an uncommonly high back.

1408

X-Q. 77. Will you swear that the upper berths of those old sleeping cars exceeded 20 inches in width?

A. I will not.

X-Q. 78. The upper berths in those two old sleeping cars were constructed in the first place fixed and immovable without hinges, were they not?

A. The first one was, the upper berths.

X-Q. 79. Will you swear positively that any upper berth in the ladies' apartment of those two old sleeping cars was ever arranged so that its front edge could be thrown up towards the ceiling of the car? 1409

A. I will not.

X-Q. 80. Did you help build either of those two old sleeping cars?

A. I did.

X-Q. 81. Mr. H. D. Bird, the then President of the road, planned, designed and arranged the sleeping devices put in each of those two cars, did he not?

A. Well, I don't know who drew the plans. It was done through his orders, I guess; I don't know who drew the plans. I was nothing more than a journeyman in the shop. 1410

X-Q. 82. What work did you do on those two cars?

A. I worked on the cars.

X-Q. 83. What part of them?

A. I helped to frame them.

X-Q. 84. This is the model which you swore to last fall as being a true and correct representation of one section of that old sleeping car, is it not?

A. It resembles it very much. 1411

The model shown to witness was "Complainants' Exhibit Lumsden Car."

X-Q. 85. Is or is not this "Complainants' Exhibit Lumsden Car" model the same identical model you testified concerning in your affidavit last fall?

Objected to as incompetent, irrelevant and immaterial.

1412

A. Well, it resembles it very much, but I wouldn't swear whether it is the same model or not.

X-Q. 86. If there is any difference between this complainants' Lumsden car model and the model you recognized and swore to last fall as a model of one sec-

1413 tion of those two old sleeping cars you don't know it,
do you?

Same objection.

A. I don't remember any. At the same time I don't swear that is the same model, though.

X-Q. 87. Who got you to come up here and give this testimony?

A. Mr. Munson.

X-Q. 88. And were you subpoenaed?

A. No, sir.

1414 X-Q. 89. You came voluntarily, did you?

A. He requested me to come.

RE-DIRECT EXAMINATION.

R-D-Q. 90. Didn't you help in the construction of the inside work of these sleeping cars as well as to frame them?

A. I did.

1415 R-D-Q. 91. Are you not certain that all the upper
berths in the ladies' apartment of those two sleeping
cars were hinged so that their front edges could be
turned up against the carlines or curves of the roof in
the day use of the cars?

Objected to as incompetent and irrelevant.

A. No, I don't remember how those berths in the the ladies' apartment worked in the day time much.

1416 R-D-Q. 92. You have stated in your direct examination that all the upper berths were swung up at an angle, with their aisle edges against the carlines of the car; do you now remember that to have been so in those sleeping cars?

Objected to as an attempt to involve

the witness in a contradiction of his testimony already given.

1417

A. Certainly it was so.

R-D-Q. 93. If you are certain that it was so, why were you not willing to swear positively to it in answer to X-question 79, now read to you?

Objected to as incompetent and irrelevant and for the further reason that the witness has stated in answer to Defendants' R-D-Q 91 "that he don't remember."

1418

Complainants' counsel calls attention to the fact that the witness' answer to said question states that he don't remember how the berths in the ladies' apartment worked in the day time.

A. Of course they was all raised up in the same way, but I don't recollect so much about the ladies' apartment as I do the other apartment.

R-D-Q. 94. After the first car was changed so that its upper berths had their front edges to swing up and the second car was built that way, was there any upper berth in either of the cars that was left fixed and immovable in a horizontal position.

A. No, sir.

W. C. BUTLER.

Attest :

THOMSON H. PALMER,
Special Examiner.

1420

Adjourned to Wednesday, August 24th,
1881, at 10 o'clock, A. M.

PETERSBURG, Va., August 24th, 1881.

10 o'clock, A. M.

1421

Met pursuant to adjournment.

Counsel appearing as before.

THOMAS W. SYKES, a witness produced on behalf of the defendants, being duly sworn, deposes and says as follows :

Q. 1. State your name, age, residence and occupation?

1422 A. Thomas W. Sykes, age, 63 ; residence, Petersburg, Va.; and occupation, dealer in wood and lumber.

Q. 2. Where were you employed in the years 1847 '48 and '49?

A. By the Petersburg R. R. I worked in the carpenter shops. I am a cabinet maker by trade.

Q. 3. Were there any sleeping cars built by that road at that time?

A. There was two.

Q. 4. Were they alike in construction?

A. Pretty much alike, sir.

1423 Q. 5 How long did you remain in the employ of this R. R. Co.

A. Some twenty eight or thirty years. I left the year the war ended.

Q. 6. That was 1865, was it not?

A. I think so, sir.

Q. 7. Please describe the construction and operation of those sleeping cars in your own way?

1424 A. They were considerably longer than had been previously built, and higher ; I don't think they were much or any wider. They had three places, one over the other, for sleeping purposes or resting, along each side of the car. There was a partition in the car, the partition was for private apartment, and at the end of the water closet there was a short seat to be sat on or laid on.

Q. 8. Did this partition divide the car so as to cut off or separate a ladies' apartment at one end?

1425

A. If they were disposed to do so. I didn't travel on the car, I don't know whether gentlemen used it or not.

Q. 9. This partition made two separate rooms or apartments in the car, one long one at one end and a shorter one at the other end, didn't it?

A. Of course, sir.

Q. 10. The water closet you speak of, was it in the small apartment or large apartment of the car?

A. In the small apartment.

Q. 11. How many sets of berths, three high, were there in the small apartment?

1426

A. There was only three, the seat at the bottom was one, and then the back of the seat formed another, and then there was one above that that went up to the top of the coach.

Q. 12. The smaller apartment I will call the ladies' apartment; were there any berths at the side of the car where the water closet was in this ladies' apartment?

A. Yes, sir. I am pretty sure there was three that was large enough to lay on, and I am not sure whether there was any over this short seat or no.

1427

Q. 13. You mean three berths high, one above the other, don't you?

A. Yes, sir.

Q. 14. Was the little seat you speak of inside of the ladies' saloon room, where the water closet was?

A. Yes, sir.

Q. 15. Won't you describe how the lower seats or berths were made and fixed in the car?

A. The lower seats, they were fixed on a kind of a box, and the first seat was on top of that. The next berth piece came down to form a back for the bottom seat, the third berth piece fastened up to the curves.

1428

Q. 16. Were these berth pieces hinged to the car side?

A. Yes, sir.

Q. 17. What was the position of the middle berth or seat back when it was to be slept on?

1429 A. It was fastened up, I think, with straps, in a horizontal position.

Q. 18. What position had the upper berths when they were to be slept on?

A. They had the same position that the middle one had, horizontal, confined from the top of the car.

Q. 19. How were these upper berths sustained or confined from the top of the car in the horizontal position for sleeping?

1430 A. They were confined by hooks fastened to the curves of the car.

Q. 20. And when they went up against the curves of the car roof, what held them there?

A. Where there was a partition there was a bolt at the end of them, and where there was no partition they were hooked by an iron hook. I forget now exactly the size, I think it was about a quarter of an inch iron—or may be three-eighths.

Q. 21. Do you mean little short hooks like door hooks or long rods?

1431 A. Well, I can't say positively—give a description fully of the hooks, they were hooked up.

Q. 22. Where the ends of the middle berths came against the partitions were bolts used?

A. Yes, sir. There were bolts.

Q. 23. You mean the top berth pieces, I suppose, as the ones that went against the curves of the roof?

A. I mean the top berth pieces.

Q. 24. Which edge of them was it that went against the curves, their aisle edges or back edges?

A. Their front edge went against the curves.

1432 Q. 25. Were there any cushions on the seats and seat backs?

A. Yes, sir; cushions there to lay on.

Q. 26. Were they fastened on?

A. I don't think any of them was fastened on, they could be taken out and lifted off.

Q. 27. Did the top berth have loose mattress?

A. I think it did.

Q. 28. Do you remember whether there was anything to keep the top mattress from falling out of the berth? 1433

A. When it was down there was a strip in front with a projection to keep it from falling out, and when it was hooked up it was held there behind it.

Q. 29 How long were these sleeping cars run as sleeping cars after they were built?

A. I can't say definitely how long they were run. To my best belief and opinion they run five or six years.

Q. 30. You mean to your best recollection, don't you? 1434

Objected to as leading.

A. Yes, sir.

Q. 31. Please look at the model now shown you, Defendants' Exhibit, "Petersburg Car," and say whether or not you have ever seen sleeping cars constructed like it, and where?

A. Yes, sir, this model represents the cars I worked on and have been alluding to. To the best of my recollection this is a pretty fair imitation and representation of those cars. 1435

Q. 32. I call your attention to two rods extending from the curves of the roof with their lower ends hooking over knobs or buttons on the front edge of the upper berth. Do you remember such rods so used in the sleeping cars you have testified about?

A. That is a very good representation of what I remember, sir.

Q. 33. I call your attention also to the fact that these rods are lapped against the face of the upper berth and on to buttons down near its lower edge to hold the upper berth against the curves in an inclined position in those sleeping cars? 1436

A. That is my recollection—that that was so.

Q. 34. Do you remember in those sleeping cars you

1437 have testified about one set of berths between the little room having a water closet in it, and the main partition that went across the car as in this model?

A. I think I remember that well, sir.

Q. 35. Is this little seat in the room having the water closet in it the one you meant by a short seat?

This and the last question objected to as leading and suggestive.

A. That is the one I meant by a short seat, sir.

1438

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 36. When did you first go to work for the Petersburg and Weldon R. R.?

A. The very date I can't re all, but it was in the neighborhood of 1843.

X-Q. 37. Did you help build those two old sleeping cars that you have attempted to describe?

A. I did.

1439

(The model is now removed from sight of the witness.)

X-Q. 38. What work did you do on them?

A. Anything that I was ordered by the foreman of the shop, Mr. Lumsden.

X-Q. 39. Mr. Henry D. Bird, the President of the Road at the time these two sleeping cars were built, furnished the plans and drawings of the sleeping arrangements in those two cars, did he not?

A. I don't know who furnished them; I don't know that he did.

1440 X-Q. 40. Did you ever ride in either of those two sleeping cars?

A. Not to lie down on a berth I never did.

X-Q. 41. And you never saw them in use then as sleeping cars?

A. I only knew them to go out as such from the depot—Jarretts'

X-Q. 42. You made an affidavit, did you not, about 1441
the construction and operation of those two old sleeping cars for the Baltimore and Ohio R. R. last fall?

A. I don't know who I made the statement to. There was a gentleman there, and of course I made a statement of what I knew in regard to it.

X-Q. 43. You were shown a model of one section of those two cars at the time you made that affidavit, and you made affidavit at that time that this model was a true and correct representation of one section of those two old sleeping cars, did you not? 1442

A. I did. That model reminded me that I seen then very much of the cars.

X-Q. 44. Please look at the model now shown you and marked Complainants' Exhibit "Lumsden Car," and is this not the identical model testified by you last fall to be a true and correct representation of one section of those two old sleeping cars?

Objected to as incompetent, irrelevant and immaterial, and as deceptive and misleading, for the reason that no such statement was made that the model sworn to by this witness at that time was a true and correct representation of those sleeping cars, but on the contrary, that it represented one section of them. 1443

Complainants' counsel calls the attention of the court to the so-called objection just entered of record as not being an objection, but simply an attempt to post the witness as to the subject matter of a desired answer. 1444

A. I don't know as this is the same one I seen then. This like that (pointing to large model) reminds me of the old cars.

X-Q. 45. Is not that small "Lumsden car model" either the identical model shown you last fall and concerning which you testified, or an exact copy of it?²

Objected to as incompetent, irrelevant, and immaterial.

A. I don't know as it is. I did not memorize these things. I can't say that it was the same one I seen then. It resembles that one if it is not the same one.

X-Q. 46. This model just examined by you, marked "Complainants' Exhibit Lumsden Car," is a true and correct representation of one section of the two old sleeping cars you have attempted to describe, is it not?

A. I don't know that this—this was not flat, that was round. that hoop there, (referring to the brass hanger.)

X-Q. 47. With the exception that the original two sleeping cars had round iron rods and hooks to support and hold up the upper berth instead of flat brass ones just mentioned by you, this Lumsden car model is a true and correct representation of one section of those two old sleeping cars, is it not?

A. I don't know that it is a true representation. I don't know that that is exactly the thing, but it is a reminder to me of the old sleeping cars.

X-Q. 48. And it is a reminder just exactly in the same way of the two old sleeping cars as this large Petersburg car model is, is it not?

A. I think that the large model is a better representation of the car, because I see more of it than this little thing here.

X-Q. 49. But so far as this little Lumsden car model represents one section of the two old sleeping cars it is a better or just as good a representation as the large Petersburg car model is, is it not?

Same objection.

A. Not in my estimation, it ain't.

X-Q. 50. You think the Petersburg car model is a

little nicer than this, don't you, and in that way represents the two old sleeping cars better?

A. I think that there is more to be seen on the Petersburg car model, which refreshes my mind back to the coaches which was built for sleeping cars.

1449

X-Q. 51. Your mind has been refreshed, has it, as to the construction of the two old sleeping cars by examining the large Petersburg model?

A. Of course I could not recollect everything about a car that was built forty years ago. Of course my mind is refreshed by seeing the model.

X-Q. 52. And until you saw these models and talked with different persons about the construction of those two old sleeping cars you had forgotten pretty much how the sleeping devices in those cars were arranged, hadn't you?

1450

Objected to as misleading, as it has not been shown that the witness talked with anyone much less different persons.

A. Well of course it had gone away from me—I never expected it to be called in question. Of course these things refresh my mind somewhat. The poorest model I have seen refreshes my recollection some.

1451

X-Q. 53. When you first began to think about the inside construction of those two old sleeping cars you couldn't recollect distinctly and definitely whether the upper berths of those cars were fixed and immovable or whether they could be swung up at their front edges to the curves or ribs of the car, could you?

A. Well I always knew that they could be swung up, and I never thought the first time that they were immovable.

X-Q. 54. Were there any upper berths in either of those two cars at any time that were constructed fixed and immovable?

1452

A. Well, I don't think there was ever any that was stationary in the last one, but the probability may be

that the first one was constructed that way and afterwards changed to turn up like the second one.

1453 X-Q. 55. Somebody has told you that within a year or two, and you are swearing now to something that somebody has told you, ain't you?

A. I am swearing to my own knowledge of working on these cars.

X-Q. 56. Yes, and some person has told you within the last year that the upper berths in that first car were afterwards changed so that they could swing up at their front edges, haven't they?

1454 A. There is four or five others that is living that has talked about the cars, and all of our ideas together centre about the building of the cars.

X-Q. 57. That is, four or five others recollect that the front edges of those berths turned up, and you not wanting to recollect anything different from the four or five others also recollect that the front edges of the berths turned up, is not that about it?

A. I am recollecting according to my own judgment, I ain't regarding what they recollect at all.

X-Q. 58. You have seen this large model Petersburg car before you came here to-day?

1455 A. I have sir.

X-Q. 59. How did it happen that you are travelling around making affidavits, looking at models and talking to four or five others about the construction of two old sleeping cars if you have any intelligent recollection about their construction yourself?

A. I am not travelling around, I have been seeked after and requested by several persons to explain how those sleeping cars were built at the Petersburg shops. I have not voluntarily explained anything.

1456 X Q. 60. Who are those four or five persons you have been talking with about those old cars?

A. Well, I have been talking to one gentleman, I could not call his name. It was the one I gave the affidavit to I have spoke to this gentleman here. (Mr. Munson), he has asked me what I knew about them, and I told him what I recollected. I have talked to Lums-

den and I have talked to Butler, and to a train hand or two, and talked with Mr. Harrison who was here last night, we all talked about it. 1457

X-Q. 61 And the result of those talks has been your recollection and testimony you have given here to-day, has not it?

A. The result of the talk was to ask them if they recollected certain things about the cars. The talks have not affected my testimony at all.

X-Q. 62. Do you want to be understood as swearing positively that the upper berths in the gentlemen's apartment in those two old sleeping cars swung up close against the curves or ribs of the cars at their front edges? 1458

A. To the best of my belief they swung as close against the roof as they could be got. It was necessary for them so to do to keep them out of the way of the heads of the persons below.

X-Q. 63. And that is the reason why you believe they swung up against the carlines or curves of the car, because you think this would be necessary to keep them out of the way of the heads of the passengers, is that it?

A. And another thing it would make a better finish. 1459
I believe they were carried up to the top.

X-Q. 64. Will you swear positively that those upper berths were not hooked or fastened at their front edges six or eight inches below the curves or carlines of the car, and that this opening and the shelf thus formed by the upper berth and this opening, was not used by the passengers to stow away their umbrellas and satchels, and small parcels in those two cars?

A. I can't say what they stored away there. It would have been an easy matter for them to have stored things there if a man could lay there and then turned the berths up to the roof. I did not go on the road and don't know what they put there. 1460

X-Q. 65. Then you don't know anything about how the berths of those two sleeping cars were used by the passengers of your own personal knowledge?

A. I don't know when they were used or by who. I know they were made for that purpose—to sleep on.

1461 X-Q. 66. Will you swear positively that there was no upper berth in either of those ladies' apartments that was fixed and immovable, and which could not be swung up at its front edge towards the ceiling of the car?

A. I would not like to swear positively. To the best of my belief all of them operated the same way.

X-Q. 67. Have you any distinct or positive recollection. I don't care anything about your belief. Have you any distinct and positive recollection that any one of the upper berths of the ladies' apartment of either of those two old sleeping cars could be turned up at their front edges, and don't you know as a matter of fact that in the ladies' apartment of those two cars that there was not the slightest necessity of turning up the front edges of those berths to get them out of the way of the heads of the ladies?

1462

A. There was as much necessity to get them out of the way as in the other apartment. I have no distinct recollection that they did turn up.

X-Q. 68. Were you a day laborer or workman in the employment of the Petersburg Road during the thirty years you were with them?

1463

A. I was a workman—done inside work on the coaches a portion of the time, about fifteen years, and afterwards, five years previous to and during the war, I was conductor and baggage agent.

X-Q. 69. You know, do you not, that those two sleeping cars were run but a few months as sleeping cars on the Petersburg Road, and that then the schedule was changed so that they were run as day cars, and never after as sleepers?

1464 A. I don't recollect how long it was before the schedule was changed, but it was a long time. I won't attempt to say the exact time when the schedule was changed.

X-Q. 70. Mr. Lumsden swore in an affidavit made by him that those cars "were run but a few months upon

said road as sleeping cars on account of change of schedule, and were then altered to the extent that the sleeping devices not useful for day service were taken out, cross seats put in one of them, adapting them to ordinary day service." Does Mr. Lumsden's oath in regard to those cars state the facts correctly? 1465

Objected to as incompetent, irrelevant and immaterial.

A. He is responsible for his oaths, I am not.

X-Q. 71. I don't ask you to be responsible for his oath. I ask you if he stated the facts correctly when he made the above statement? 1466

Same objection.

A. As far as the length of time that he gave them, I must differ with him in opinion.

X-Q. 72. Will you swear positively that either of those two old sleeping cars run on that road over one year from the date of their building as sleeping cars. I have no reference to them as day cars?

A. To the best of my belief they ran on there more than twelve months as sleeping cars. I wouldn't certify to any particular time that they ran there. 1467

X-Q. 73. You never saw anything of those cars after you began running on the road five years before the war, did you?

A. I think not.

Adjourned to 2 o'clock, P. M.

2 o'clock, P. M., resumed.

X-Q. 74. This party for whom you made the affidavit last fall was working for the Baltimore and Ohio R. R. Company, was he not? 1468

A. I don't know.

X-Q. 75. You made that affidavit for that company, didn't you?

1469 A. Well, I told the first gentleman who came to see me—I don't know who he was working for. He got Mr. Stewart to come up there with him, and I signed the paper containing what I had said to him.

X-Q. 76. Who is Mr. Stewart?

A. He is an old citizen of Petersburg. He came there as Notary Public.

X-Q. 77. Were you paid anything for signing the affidavit?

A. I was never offered a cent for signing the affidavit.

1470 X-Q. 78. Was any money paid you for any purpose?

A. After this thing was over, this old gentleman came along and said, I have bothered you a good deal and the most of you appear to be poor men, and he tendered me a five dollar note and I gave him two dollars change.

X-Q. 79. Did he employ you to look up any other witnesses?

A. He did not employ me, but he said if I knowed of any others I could refer them to him, to be found at Lumsden's.

1471 X-Q. 80. And three dollars is all the money you have got for your services so far?

A. Yes; and without any knowledge that I was going to get that.

X-Q. 81. Who made this large model "Petersburg Car"?

A. I don't know.

X-Q. 82. You wouldn't have known what that model represented, if it had not been shown to you and told what it was, would you?

1472 A. Yes, I would. I have seen that car too often not to know what that represented.

X-Q. 83. Whereabouts were the stoves in the ladies' apartments of those two old sleeping cars?

A. I don't think there was any stove at all in the

ladies' apartment. The stove was in the middle of the car, I think.

X-Q. 84. Was it a coal or a wood stove?

1473

A. Pretty sure it was a wood stove—or they burnt wood in it.

X-Q. 85. Was there a door between the ladies' and gentlemen's apartment of those two cars?

A. To the best of my recollection there was a door.

X-Q. 86. Was there any water closet in the gentlemen's apartment of those two sleeping cars?

A. I won't say positively about that—I can't say.

X-Q. 87. How do you happen to recollect that there was a water closet in the ladies' apartment when you can't recollect anything about the gentlemen's?

1474

A. Well, I recollect that very often there was no ladies on the car, and the water closet could be used by gentlemen, but I don't recollect that there was any water closet in the gentlemen's apartment—I wouldn't say positive to that.

X-Q. 88. Don't you recollect, after having your attention called to it, that the water closets in the ladies' apartments of those two old sleeping cars were just three feet square, and that this short seat you have been talking about was on the outside of the water closet and between the water closet and that tier of bunks?

1475

A. I don't recollect that it was three feet square. I recollect that it was made as small as possible, to give more room. The narrower it was the longer the seat would be from the partition.

X-Q. 89. And this seat then was on the outside of the water closet room proper, was it?

A. Yes.

X-Q. 90. Was this seat enclosed or built around in any way from the rest of the car?

A. No, sir; not as I know of, sir.

1476

X-Q. 91. And this short seat was outside of the water closet and ran along the side of the car and faced the row of bunks or of berths on the opposite side of the car, did it?

A. Yes, sir.

X-Q. 92. How large was the water closets proper in the two ladies' apartments of those two sleeping cars ?

1477 A. I suppose two and a half by three feet.

X-Q. 93. The carlines or curves of an ordinary passenger car, such as were built between 1843 and 1850, were sixteen inches apart, were they not ?

A. More than that, sometimes, sir.

X-Q. 94. But that was the usual distance, was it not ?

A. Some windows were made narrower than some others, but it was a common thing to have the same space between the window posts that the curves had as the curves went on them.

1478 X-Q. 95. Do you recollect whether or not they ever had any trouble when the cars were used as sleepers about those rods which held up the upper berths coming unhooked and the upper berths falling down ?

A. I don't recollect anything of anything of the kind.

X-Q. 96. What distance did these cars run, when used as sleepers ; or what was the distance between Petersburg and Weldon in 1847 and '48 ?

A. Sixty-four miles it was always called.

X-Q. 97. What was the height between the floor and the curves of the common passenger cars, used on that road between '43 and '50, at the r wall sides ?

1479 A. I don't suppose it was more than five feet ten no-how.

X-Q. 98. How high were those two sleeping cars at their wall side between the floor and the underside of the curves or carlines ?

A. I should say they were about five feet six inches, but I am not sure of that.

X-Q. 99. Were there any windows in the ends of those two old sleeping cars ?

1480 A. I don't think there was any windows in the ends of them.

X-Q. 100. Did the passengers have to pay anything extra to ride in those two old sleeping cars ?

A. I do not know.

X-Q. 101. You know, do you not, that Mr. Bird, the

then president, ordered those two sleeping cars built according to the same style of a sleeping car that he had seen several years before that time running between Richmond and Fredericksburg, this State? 1481

A. I don't know where he saw any sleeping cars. I believe he ordered those that I am speaking about.

X-Q. 102. You knew at the time you were building those two old sleeping cars that a sleeping car exactly or nearly like those two you were building had been built and run several years before on the Richmond, Fredericksburg and Potomac R. R., did you not?

A. I didn't know anything about that.

RE-DIRECT EXAMINATION BY MR. MUNSON

1482

R-D-Q. 103. Did you mean to say or be understood that all the persons named by you that you talked with about those cars were present together comparing notes, or that you talked with Mr. Lumsden and Mr. Butler and Mr. Harrison at different times?

Objected to as suggesting a desired answer, and not calling for an explanation.

1483

A. I talked to them at different times and different places, and they never was all together that I ever seen.

R-D-Q. 104. Did either of them or any one else ever try to put their ideas of these old sleeping cars into your head?

A. There was two or three of them wanted me to put some ideas into their heads.

R-D-Q. 105. I suppose this man who got your affidavit and myself wanted you to put ideas into our heads by asking you about the car, is that what you mean? 1484

Objected to as leading.

A. That is what I mean?

R-D-Q. 106. Were you here with Mr. Harrison last evening?

1485 A. I was not.

R-D-Q. 107. Is it not your recollection that the upper berths in the ladies' apartment were hinged so that they could be turned up against the curves if they wanted to turn them up, just the same way as they turned up the upper berths in the rest of the car.

Objected to as leading and as immaterial in view of the previous testimony of the witness.

1486 A. I think it probable that they could have been used in the same way. They were all hinged, sir, to my opinion.

R-D-Q. 108. What do you mean by your opinion?

A. My opinion is that the hinges were necessary there to hold the backs of the berths.

R-D-Q. 109. When you say that it is your opinion do you mean that you recollect it?

A. Not fully.

1487 R-D-Q. 110. You have stated in your direct examination that the little seat was inside of the small room containing the water closet seat, and in your cross-examination you have said that this seat was outside of the water closet room. Can you explain what you mean?

A. It wa'nt inside, and I have never said so as I know of, that seat was in the ladies' department.

R-D-Q. 111. I now call your attention to the model "Petersburg Car," which shows a little seat inside of the water closet room in the sleeping cars, was this little seat enclosed in the little room containing the
1488 water closet, as in the model?

Objected to as leading, and as an evident attempt on the part of the Defendants' counsel to induce the witness to change his testimony as to the location of

this small seat in the face of his cross-examination, and of his last answer given to defendants' counsel. 1489

A. My idea is that this corner (pointing to the water closet seat) was separate from the seat ; that there was a partition across.

R-D-Q. 112. Do you mean that there was a room built up in the corner as in this model, with a water closet in one corner of it, and a seat in the other part of it, with a partition across between the seat and the water closet?

Objected to as leading and suggesting
a desired answer to the witness. 1490

A. The room that was built up was the water closet and the partition that was across the car divided the two apartments of the car.

R-D-Q. 113. I understand you to say that there was a partition across between the little seat and the water closet. What I want to know is whether you mean that the seat and partition and water closet were inside of the room in the end of the car, as in the model? 1491

Objected to as grossly leading, and complainants' counsel protests against the repeated endeavors of the defendants' counsel to induce the witness to change his positive testimony as to the construction of the water closet and the location of the seat on the outside thereof, as sworn to by him.

A. Of course it was all in the room. There was a 1492
separation between the water closet and seat.

R-D-Q. 114. You gave the height of ordinary passenger cars in '47 at the wall side as about five feet ten inches, and the height of those sleeping cars at the same point as five feet six inches, and yet you say you

1493 recollect that the sleeping cars were built higher than ordinary passenger cars. Do you mean to be understood now as saying that the sleeping cars were lower than the ordinary cars?

A. I do not. I mean to be understood that those curves were much quicker than in ordinary passenger cars, and gave the center of the cars considerable more height than any of the cars we had about here at that time.

RE-CROSS EXAMINATION.

1494 R-X-Q. 115. In answer to question 113 as to whether you mean that the seat and the partition and water closet was inside of the room in the end of the car as in the model, you reply, "of course it was all in the room." You mean by that, do you not, that it was all in the room forming the ladies' apartment?

A. Yes.

RE-RE-DIRECT EXAMINATION.

1495 R-R-D-Q. 116. In the last question asked you, by the ladies' apartment is meant all that portion of the car between the main partition across the car and the end of the car, as shown in this model. Your answer makes you say that you mean that the partition and water closet and little seat were in that room, while your answer to question 113 makes you say that there was a little room built in one corner of the ladies' apartment in which little room there was a water closet and a little seat and a partition between them. Do you mean to say that the water closet, partition and little seat were in such little room?

1496

Objected to as leading and as misstating the testimony of the witness and as a continued attempt to induce the witness to swear to a construction of those two old sleeping cars like the separate apartment

built up in one corner of the model instead of such construction as heretofore testified to in several places in his deposition. 1497

Question withdrawn.

R-R-D-Q. 117. Do you wish to be understood that the water closet and partition and little seat were in a room built up in one end of the ladies' apartment as is shown in this model "Petersburg Car"?

Last objection repeated.

A. I wish to be understood that the water closet, partition and a short berth on one side of the ladies' room, on the opposite side berths to the best of my belief. 1498

R-R-D-Q. 118. If there was a partition inside of this little room shown in the model, and that partition was built up between the water closet seat and the cushioned seat, would that be what you have tried to explain as the construction in that old sleeping car?

Last objection repeated. 1499

A. That is exactly it.

RE-RE-CROSS EXAMINATION.

R-R-X-Q. 119. To make this model like what you have sworn to as being the construction of the water closet and the short seat in the ladies' apartment, you would run a partition directly at the end of the short seat so as to form a water closet, and then you would remove the superfluous partitions shown in this model so as to throw this short seat into the ladies' room or apartment as you have testified, wouldn't you? 1500

A. It is in the ladies' room all the time the main partition divides the car. The water closet is in the same department.

1501 R-R-X-Q. 120. Yes, but do you mean to now swear that this short seat in the ladies' room or apartment was shut up, surrounded and enclosed by partitions as shown in this model?

A. I mean that the partition across the car, that shut it up when the middle door was shut formed a distinct department of the car.

R-R-X-Q. 121. But you don't mean, do you, that that short seat in the ladies' apartment was built up and surrounded by partitions in a room by itself, as shown by this model?

1502 A. I mean that that partition that goes across the car divided the car into two apartments.

R-R-X-Q. 122. Question repeated.

A. My recollection don't carry me that that was sealed up in front. The portion that the privy was in was sealed up all around. I would not take an oath that that was not sealed up there. I would not swear that it was sealed up there or that it was not.

THOS. W. SYKES.

Attest:

THOMSON H. PALMER,

Special Examiner.

1503

Adjourned to 10 A. M. Thursday, August 25, 1881.

PETERSBURG, VA., Aug. 25, 1881.

Met pursuant to adjournment. Counsel appearing as before.

JOHN H. HARRISON, a witness produced on behalf of the defendants, being duly sworn, deposes and says as follows:

1504 Q. 1. State your name, age, residence and occupation?

A. John H. Harrison, age 47, residence, Petersburg, Va., and occupation, locomotive engineer on the Petersburg and Weldon R. R.

Q. 2. When did you first go into the employ of the Petersburg R. R.?

1505

A. In 1849.

Q. 3. When did you first work as engineer running a locomotive on that R. R.?

A. In 1853.

Q. 4. When you worked on that R. R., in 1849, were there any sleeping cars in use on it?

A. Yes sir.

Q. 5. How many?

A. There were two.

Q. 6. How were the berths arranged in them?

A. They were arranged one berth over the other, 1506
three high.

Q. 7. Along the sides of the cars or in the middle?

A. Along the sides of the cars.

Q. 8. Was there any ladies' apartment in them?

A. Yes, sir.

Q. 9. How was it divided from the larger part of the car?

A. By a partition, across the car with a door.

Q. 10. Was there a water closet in the ladies' apartment?

A. Yes, sir.

1507

Q. 10½. How many berths in the ladies' apartment?

A. There were nine berths—hold nine people.

Q. 11. How many berths on the side with the water closet?

A. Three—one set.

Q. 12. Was this set of berths between the water closet and the main partition?

A. Yes, sir.

Q. 13. What made the lower berths in those cars?

A. The seats.

Q. 14. What made the middle berths?

1508

A. That was a berth made to hang up by hooks.

Q. 15. Did the middle berth make the backs of the seats?

A. Yes, sir.

Q. 16. How were the top berths made?

- A. The top berth was made to hoist up and let down and hang by hooks or rods when they were lying on it.
- 1509 Q. 17. Did all the top berths hoist up ?
- A. Yes, sir.
- Q. 18. When they were hoisted up, in what position were they ?
- A. They was hoisted upwards to the car top.
- Q. 19. Do you know what held them there ?
- A. I don't know the fixtures that held them there. There were iron rods.
- Q. 20. When they were hoisted up, did they stand horizontally or were they inclined ?
- A. They stood inclined.
- 1510 Q. 21. Did you ever sleep in either of these cars ?
- A. Yes, sir.
- Q. 22. While the cars were moving over the R. R ?
- A. Yes, sir.
- Q. 23. Been in them when the cars were at either end of the road in the day time ?
- A. Yes sir.
- Q. 24. Have you seen persons occupying the berths travelling over the road ?
- A. Yes, sir.
- 1511 Q. 25. Where these sleeping cars running on the road and used as sleeping cars in 1853, when you became engineer ?
- A. Yes, sir.
- Q. 26. Were the upper berths let down flat when they were slept on ?
- A. Yes, sir.
- Q. 27. Do you know whether they charged anything more than regular R. R. fare for passengers to use these sleeping cars ?
- A. I do not.
- 1512 Q. 28. Please look at the model I now show you, Exhibit "Petersburg Car," and state whether you ever saw sleeping cars made like it ?
- A. Yes, sir ; the two cars that were run on the Petersburg road, that I have been testifying about, were built in that style.

Q. 29. Do you mean they were like that model so far as the portion it shows illustrates the cars?

1513

Objected to as leading.

A. Yes, sir.

Q. 30. Did the upper berths go up against the roof as shown in this model?

Objected to as leading.

A. They went up as shown in that model.

Q. 31. Do you remember the water closet room and the set of berths between it and the main dividing partition—cutting off the ladies' apartment, as shown in the model?

1514

Objected to as leading and suggestive.

A. Yes, sir.

Q. 32. Do you remember whether the top berths had mattresses in them or not?

A. Yes, sir; they had mattresses in them.

1515

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 33. When did you first go to work for the Petersburg road?

A. I went there in '49.

X-Q. 34. What time in the year '49?

A. I went there on the 5th day of March.

X-Q. 35. What work did you do?

A. The first work I done I worked on the R. R. track.

X-Q. 36. With other day laborers repairing the track?

1516

A. Yes, sir.

X-Q. 37. How long did you work on the track of the Petersburg Road?

A. Twelve months.

X-Q. 38. What next did you do?

A. I went as train hand on the train.

1517

X-Q. 39. How long did you work as train hand?

A. About three years and a little rise.

X-Q. 40. What next did you do?

A. I ran as locomotive engineer.

X-Q. 41. How long did you run there as engineer?

A. From the 3d day of August, 1853, up to the present time, excepting three years and four months, when I ran on the Wilmington and Weldon R. R. I am now running on the Petersburg Road.

X-Q. 42. Your recollection about the internal construction and arrangement of those two old sleeping cars is not very positive and distinct, is it?

1518

A. My recollection is very distinct about the berths, there being three berths, one on top of the other, and their hoisting up.

X-Q. 43. Will you swear that every upper berth in those two sleeping cars could be hoisted up towards the roof of the car?

A. As to every one—I could not swear to that. I will swear that they hoisted up, but there might have been one stationary somewhere in the car; but I know they hoisted up all through the car, each side.

1519

X-Q. 44. There might have been three or four of those upper berths in each of those cars that were so fastened that they could not be hoisted up upon either their front or back sides, without your knowing it, might not they?

A. I don't think there were.

X-Q. 45. I don't ask you what you think about it?

A. Then I will answer there was not.

1520

X-Q. 46. Will you swear positively that there was not four of those upper berths in each one of those old sleeping cars that were fastened permanently by those hanging down rods so that they could not be moved towards the ceiling, either at their front or back edges?

A. I couldn't swear positively that there wasn't or was, my recollection would not carry me back so far.

X-Q. 47. Then, as far as your recollection enables you to swear positively, there might have been half of

those upper berths so fixed and hung down with those iron rods that they could not have been moved out of place in both of those old sleeping cars? 1521

A. I can swear safely that there was not half of them.

X-Q. 48. How many stoves was there in each of those cars?

A. I couldn't tell you, sir.

X-Q. 49. Was there more than one in the ladies' apartment?

A. No, sir.

X-Q. 50. Where did the stove stand in the ladies' apartment of those old sleeping cars? 1522

A. I don't recollect.

X-Q. 51. After having your attention called to it, don't you know that the stove in the ladies' apartment stood next to the water closet, and between the water closet and the row of berths on that side of the car?

A. No, sir; I do not. I don't recollect.

X-Q. 52. Have you intended to swear positively that there was a water closet in the ladies' apartment of those two old sleeping cars?

A. Yes, sir.

X-Q. 53. Where was the water closet in the gentlemen's apartment? 1523

A. There wasn't any in there.

X-Q. 54. Somebody has told you that there wasn't any in there within the last few days, haven't they? You haven't any distinct recollection yourself about it?

A. No one has told me a word, sir.

X-Q. 55. And you swear positively, do you, that there was no water closet in the gentlemen's apartment in either of those two old sleeping cars?

A. I will swear positively, to the best of my recollection, that there was none in the gentlemen's apartment. 1524

X-Q. 56. Have you got any distinct recollection about it whether there was any there or not, or are you just guessing at it?

A. I have a recollection that there was none there.

1525 X-Q. 57. How many feet square was that water closet in the ladies' apartment?

A. I don't know, sir. I never measured it.

X-Q. 58. Well, how large was it?

A. I couldn't tell the size. I never measured it and don't recollect ever being in it.

X-Q. 59. Was there any short seat in the ladies apartment of those two cars?

A. None but the long seats.

1526 X-Q. 60. You don't know, do you, that there was a short seat at the side of the water closet in those two old sleeping cars between the water closet and the berths?

A. I have no recollection of any.

X-Q. 61. That is, you don't recollect whether any was there or not?

A. No, sir.

X-Q. 62. Was the ladies' apartments of those two sleeping cars carpeted?

A. I have no recollection of a carpet.

X-Q. 63. And you have no recollection whether it was carpeted or not?

A. I haven't.

1527 X-Q. 64. Were there any lamps in the ladies' apartment to light up the apartment at night in those two old sleeping cars?

A. There was a lamp there.

X-Q. 65. Where was that lamp?

A. That lamp was fastened in the end of the car.

X-Q. 67. Whereabouts in the end of the car?

A. As near as I can recollect it was fastened above the end window.

1528 X-Q. 67. There were two end windows in the ladies' apartment of those two old sleeping cars, were there not?

A. I don't think there was but one. The saloon had one—the ladies' saloon—the window might have been there, the window in the ladies' saloon, I don't know.

X-Q. 68. And the window that you recollect in the ladies' apartment was the window in the end of the car

on the other side of the door from the ladies' saloon, is that it?

A. That is it, sir, the other side of the door.

1529

X-Q. 69. And this lamp hung just above that window in the ladies' apartment in the end of the car?

A. Yes, sir.

X-Q. 70. Then there were no berths coming up against the end of the car in the ladies' apartment where this window and lamp was, were they?

A. The lamp was just above the berths.

X-Q. 71. Just above what berths?

A. The top berth.

X-Q. 72. Then the top berth in the ladies' apartments of those two old sleeping cars didn't come very near the end of the car where the lamp was, and if not, how far away was the nearest end of the top berth to the lamp or window at the end of the car in the ladies' apartment? 1530

A. I have no recollection how near it came to the end of the berths.

X-Q. 73. Don't you recollect now that there was a short seat in the ladies' apartment right at the end of the car under the window and lamp in the ladies' apartment of those two cars? 1531

A. No sir, I do not; I don't recollect about any short seat.

X-Q. 74. Did the nearest end of the berths on the side of the car next to the lamp and window in the end of the car in the ladies' apartment come nearer than two feet and a half or three feet to the lamp and windows?

A. I don't recollect.

X-Q. 75. Your recollection about the ladies' apartment of either of those cars, as far as the construction and arrangement is concerned, is not very distinct, is it? 1532

A. No sir.

X-Q. 76. You know, do you not, that the berths in the ladies' apartment were much narrower than the berths in the gentlemen's—the two top berths?

- A. To the best of my belief they were all the same width?
- 1533 X-Q. 77. The only reason that the berths in the gentlemen's apartment were movable at their front edges was to get them out of the way of the passengers wasn't it?

Objected to as calling for an opinion and not for what the witness knows as to the facts.

- A. There was room enough for them to pass between them, I think. It was when they were setting down ;
- 1534 it was movable to make a back for the seats.

JOHN H. HARRISON,
by THOMSON H. PALMER,
Special Examiner.

Adjourned to 10 A. M., Saturday, August 27, 1881.

PETERSBURG, VA., Aug. 27, 1881, 10 A. M.

- Met pursuant to adjournment. Counsel
- 1535 as before.

Witness unavoidably absent, having unexpectedly been sent to a distant part of the R. R., on duty as engineer.

Adjourned subject to notice.

THOMSON H. PALMER.
Special Examiner.

- Counsel for the respective parties waive further examination of this witness, and consent that the examiner may sign the witness's name to the deposition and that the deposition shall have the same force
- 1536

and effect as if the witness had affixed his
signature thereto in person.

THOMSON H. PALMER.

1537

Special Examiner.

IN U. S. CIRCUIT COURT,

1538

NORTHERN DISTRICT OF ILLINOIS.

GEO. M. PULLMAN AND PULLMAN'S
PALACE CAR CO.,

versus

N. Y. CENTRAL SLEEPING CAR
COMPANY, AND WEBSTER WAGNER.

In Equity.

1539

Further testimony taken on behalf of the defendants pursuant to notice under the 67th Rule in Equity as amended, before Thomson H. Palmer, a notary public and special examiner in said cause, at Chambersburg, Pennsylvania, on the 28th day of September, 1881.

PRESENT.—C. K. Offield, Esq., for Complainants.

H. T. Munson, Esq., for Defendants.

JACOB SHAFFER, a witness produced on behalf of the
defendants, having been duly sworn, testified as fol-
lows :

Q. 1. State your name, age, residence and occupa-
tion ?

1541 A. Jacob Shaffer, age 62 the 22nd of November, 1881, residence Chambersburg, and occupation, carpenter and car builder.

Q. 2. Where are you employed at the present time?

A. By the Cumberland Valley R. R.

Q. 3. How far does its lines now extend?

A. From Harrisburg, Pa., to Martinsburg, W. Va.

Q. 4. When were you first employed by said R. R. Co.?

1542 A. I first worked for them in the fall of 1835. It was in connection with laying out the road. I afterwards assisted in putting up all the buildings belonging to the R. R. Co. In 1837 I commenced working in the car shops.

Q. 5. Did you ever know of sleeping cars being used upon the said R. R., during your early connection with it?

1543 A. Shortly after I commenced work in the shops they was two cars came here, both built alike, as the outside appeared. That is, the woodwork was all alike, the painting differed. The inside was different. The one car was divided by one partition, which part was used for a ladies' department. The balance of the car had cross seats in. The other car was divided by one partition that went clear across the car, with one door in the center, cutting off one end of the car for a ladies' apartment. Then came two tiers of berths, that is, two tiers in length, and three berths in height, separated from each other by partitions. The partitions extended from the floor to the roof on the side of the car, they extended from the side of and out into the car as far the berths did. The balance of the car was fitted up with cross seats.

1544 Q. 6. Were there two tiers of berths on each side of the car near its middle?

A. Yes sir.

Q. 7. Was there a central passageway extending from end to end of the car?

A. There was a central passageway running from

end to end of the car which was closed by the door in the partition diividing off the ladies' apatment.

1545

Q. 8. These partitions you have spoken of, were they fixed in place stationary?

A. They were stationary.

Q. 9. Did the ladies' apartment have sleeping accommodations; if so, please describe them?

A. Yes, sir, it had. On one side of the car there was a stationary sofa running from the end of the car to the partition. To its front edge was attached a dropping piece by hinges, which in dry time was turned down vertically so that the sofa could be sat upon. At night it was raised up on a level with the sofa seat to form a wide berth; there was a permanent shelf up near the top of the car on that side. The other side of the ladies' apartment had a similar seat, but without a drop-piece and without a shelf.

1546

Q. 10. Were the two tiers of berths in the middle and on opposite sides of the car between the fixed partitions constructed alike?

A. Each set was constructed alike.

Q. 11. Please describe one set of three berths?

A. The first was a stationary seat with a loose cushion on it, the second one, which formed the back for the first one, was hung with hinges to the side of the car. In day travel this formed the back for the seat or bottom berth, and at night it was raised up horizontally and formed a middle berth. The top berth was hung to the partition at each end by a peculiar kind of an iron; as near as I can describe it it was formed in the shape of a sickle. The one end had a round boss on which part when screwed up to the bottom of this berth held the berth. There was a plate connected with each iron. These plates were let into the partition and the onds of these irons ran into a hole in the middle of the plate. These irons were on the back end of the berth. That berth, in day time, could be swung up towards the top of the car. It was held up by two girths. Those girths were fastened to the carlines or rafters of the roof by a wood strip running along the

1547

1548

1549 head-lining. The other ends of the girths had a bottom hole which hooked onto a button on the face of the berth and held it up. In the night it was unhooked from those girths and let down to a horizontal plane, where it was held by two sliding bolts, one at each end of the berth near the front lower edge. There was an opening or slot cut into the partitions into which those bolts entered. There was also two girths extending from the strip at the roof down. On the bottom of that berth there were two brass plates having hooks at the front end. The long girths had a square loop of brass which hooked onto the hooked plate and made a support for the centre of the berth.

1550 Q. 12. Were the cushions on the middle berth or seat back fast or loose?

A. They were fastened on the middle and upper berths.

Q. 13. Am I to understand that these berths run longitudinally of the car, parallel and against its sides?

A. They did.

1551 Q. 14. From your description I understand the irons upon which the upper berth swung had long shanks curved like a sickle with a boss at one end, which operated as the pintle of a hinge, which boss or pintle entered a socket in the partition formed by a protecting plate having a bearing hole cut through it. Is that right?

A. That is right.

Q. 15. Where were you employed in 1843?

A. By the same company.

Q. 16. Do you know anything of a car being provided with sleeping berths at that time in the company's shops here?

A. I do. Yes, sir.

1552 Q. 17. How was it constructed as compared with the first car which you have described?

A. It was the same with the exception of the upright partitions. Those in the first car were scalloped out in the front so as to have a gracefully curved edge. In the second the partitions had a straight front from bot-

tom to top. It differed a little in the way in which the top berth was held. The second car when the berth was let down it lodged on a cleet at each end fastened to the partitions in place of the bolts that were in the first car. There was a little change in the ladies' apartment of the second car. In the second car the dropping front had two swinging legs to support it when it was up. The first car merely had a slide under the centre which was drawn out to support the centre of the front piece when raised up. Except these differences the two cars were alike. 1553

Q. 18. How long after these cars were put into use upon the said R. R. did they remain in use as sleeping cars? 1554

A. They remained up to, as near as I can tell, in 1848.

Q. 19. Did you ever ride in them as a passenger?

A. Yes, sir; a great many times.

Q. 20. Did you ever rest in the upper berths of either of those cars?

A. Yes, sir.

Q. 21. When did the Cumberland Valley R. R. begin to run its cars from Harrisburg, Pa., to Hagerstown, Md.? 1555

A. It must have been 1842 and part of 1843. From Chambersburg to Hagerstown it was then run by other parties by horse power. It was run regularly by the Cumberland Valley R. R. by steam power from about 1852 or 1853.

Q. 22. Were these sleeping cars ever run south of Chambersburg?

A. They might have run a trip or so there when they were short of cars, but they ran regularly from Chambersburg to Harrisburg.

Q. 23. Where did they run when you occupied a berth in them? 1556

A. From Chambersburg to Harrisburg and back.

Q. 24. Were those sleeping cars used regularly from the time they were built till sleeping car service on the road was discontinued?

A. Yes, sir.

1557 Q. 25. Do you know where those two cars came from originally?

A. They came from Philadelphia.

Q. 26. Do you know why they put sleeping cars into use on this road at so early a date?

1558 A. I do know what I heard at that time. Mr. Burline, who was our chief manager here at that time, and had full control of the entire road, told me that when he went to get these cars built in travelling from here to Harrisburg, got into a conversation with passengers, who came from Pittsburg, Pa., here, by way of stage. He said in the conversation that some of the passengers, when they found that he was going on for the purpose of getting cars built, one gentleman made the remark, what a nice thing it would be if passengers coming here from Pittsburg could be provided with a sleeping place on the cars, when they arrived here. He said that suggestion raised the conversation about it and his attention having been called to it, he had the sleeping car built when he got to Philadelphia.

1559 Q. 27. This was the only route from Pittsburg to Philadelphia, Baltimore and New York, in those early days, was not it?

A. Yes, sir.

Q. 28. How close to the roof of the car did the front edge of each of those upper berths in those two sleeping cars stand when fastened up in the inclined position for day use?

A. To the best of my recollection it was about five inches.

Q. 29. In raising the upper berth to fasten it in its inclined position, could it be pushed up and back, so that its front edge would strike the roof?

1560 A. It could.

Q. 30. Could you button on the girths conveniently without pushing it up against the roof?

A. No, sir; not so well.

Q. 31. And when these straps were fastened upon the buttons, did its front edge drop backward and down

so as to leave the space of five inches between the front edge and the roof?

A. It did.

1561

Q. 32. When the upper berth was raised up, was there any space behind it?

A. There was; yes, sir.

Q. 33. What enclosed this space or bounded it?

A. At each end it was closed by the partitions, in the rear by the side of the car, on top by the roof, the front and lower part by the berth itself.

Q. 34. Were there any pillows provided for each of the berths in these sleeping cars?

A. There was one for each sleeping place, one for each single berth and one for each end of the sofas in the ladies' apartment. 1562

Q. 35. Any coverings for the passengers?

A. There was a blanket and quilt for each single berth in the gentlemen's apartment. I don't remember seeing any coverings in the ladies' apartment.

Q. 36. Where were the pillows and coverings of the single berth kept during the day time?

A. They were kept in a part that our conductor used to call a cupboard or clothes press, which was the space behind the upper berths when raised. 1563

Q. 37. Have you not made a model of the car, the sleeping devices in which you constructed in 1843 which has been referred to as the second sleeping car on the Cumberland Valley R. R.?

A. Yes, sir.

Q. 38. Will you please produce the same to be exhibited in this cause?

A. I produce it.

The said model is filed in evidence and marked with the title of this cause and Defendants' Exhibit Chambersburg Car Thomson H. Palmer, Special Examiner. 1564

Q. 39. How accurate is the construction of this model

as compared with the construction and operation of the sleeping cars used upon the Cumberland Valley R. R.,
1565 as you have testified?

A. That model, I think, is as correct as anything could be made; every piece of timber in it is the same as the original second car. The only thing is the height. I may have lost or gained a half an inch in the height, but I can't be more than that out of the way. I am not sure whether there was four or three swinging back seats on a side in the original car. The rest is accurate on a scale of three inches to the foot and it shows exactly one half of the car.

1566 Q. 40. Is this model also an accurate reproduction on the scale mentioned of the first of the two sleeping cars, with the exception of the differences between them you have described?

A. Every other way it is the same as that first sleeping car.

Q. 41. Are there any parts of the first sleeping car now in existence?

A. There are. There are two sash and one sliding bolt and the roof.

1567 Q. 41 a. Were there fixed partitions placed at both ends of the berths that formed two tiers or sections three berths high on opposite sides of the car, near its middle part, or between the ladies' apartment and the cross seat portion?

A. There was; but the partition at one end was the ladies' partition going clear across the car.

Q. 41 b. Did each of the berths in each tier have each end next to a fixed partition, and did each middle and upper berth swing up and down with its opposite ends close to one of these partitions, in both cars you have described?

1568 A. That is right, it was so.

Q. 41 c. How were the middle berths fastened up when they were to be slept upon?

A. By bolts near each front end which shot into the partitions.

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 42. Were you subpoenaed or did you come voluntarily to give your testimony? 1569

A. I was not subpoenaed; I came at the request of Mr. Munson, (counsel.)

X-Q. 42 a. As I understand you, this model Chambersburg Car was built by yourself and is an exact reproduction, item, itemized, and details, of the second or 1843 car, built by you as far as it shows, is that so?

A. I should say that it is.

X-Q. 43. And you have explained all the differences existing between the first and second sleeping car on the Cumberland Valley Road, have you? 1570

A. Yes sir. There were only those three points.

X-Q. 44. You have frequently given your testimony during the last twenty years regarding the construction and operation of those two old sleeping cars, have you not?

A. This is the fourth time.

X-Q. 45. Has your recollection of the construction and operation of those two old sleeping cars always been the same as you have given to day?

A. I think it has.

X-Q. 46. What is the distance and was the distance between Chambersburg and Harrisburg at the time those two cars ran on the road? 1571

A. Fifty-two miles, I think they call it that. I think they average the bridge at Harrisburg at the time rate of five miles.

X-Q. 47. Was that bridge in existence at the time of the running of those two cars?

A. No sir, not the same bridge, some of the piers were; there was a bridge there, which was subsequently destroyed and replaced. 1572

X-Q. 48. What length of time was occupied in running those two cars between Chambersburg and Harrisburg and *vice versa*?

A. They started away at 1 o'clock A. M., at night, and generally got down there about seven in the morning, I

think, and that same train was due back here at 11 A. M. the same day, and didn't often get either way on time.

1573

X-Q. 49. Both of those old sleeping cars were common day cars originally, were they not?

A. The one was a sleeper and the other was not.

X-Q. 50. Which was the day car?

A. What we have called here the second car. Both cars came here together, one fitted up as a sleeper, and the other as a day car. It was the day car that I changed in 1843, to a sleeping car, as shown by the model here.

X-Q. 51. By whom were these two cars originally built?

1574

A. That is a question that I couldn't answer except from hearsay.

X-Q. 52. Where did these cars come from and what do you know or have heard as to who constructed them?

A. Those cars came from Philadelphia, but as far as the building is concerned, I have heard of two parties who might have built them, one was Richard Imlay or something of that kind. The other party, I think, was Kimball & Gerton.

1575

X-Q. 53. Were not the names of the manufacturers on those cars engrossed or lettered on some parts of the car?

A. Not that I remember. They might have been, but I don't remember it. There was some kind of lettering on the pedestals of the trucks, but what kind, I don't remember.

X-Q. 54. Were these cars drawn by steam power all the time they were run between Harrisburg and Chambersburg?

1576 A. Ever since I knew them, they were drawn by mules from Harrisburg to Bridgeport, across the bridge, that is, from one end of the bridge to the other, across the Susquehanna.

X-Q. 55. Were those two cars exactly the same in construction and dimensions except as to other internal arrangement of sleeping devices?

A. They must have been. They had one kind of sash, that's one sure guide. The change that I made when I took out the cross seats and put in sleeping accommodations in the second car. The sleeping devices were the same and fitted the same as in the first car, and that is another sure indication. 1577

X-Q. 56. Were these two cars perfectly new when they first rolled into Chambersburg, or had they been used before?

A. They were new, sir.

X-Q. 57. What was the height, length and breadth of those two cars in their inside dimensions?

A. The length was 34 feet neat from corner post to corner post, without the corner plates below, they would make it 34 feet 1 and $\frac{3}{4}$ inches, with the addition of the mouldings. The breadth was eight feet from out to out. The height I can't give accurately. The arch of the roof was three and five-eighths inches. These dimensions were obtained from the roof which is now in existence. 1578

X-Q. 58. Come within an inch of the height of the car at its inner or wall side between the floor and the under side of the carlines?

A. No, sir. That's what I said before that I could not give correctly. That height we have got nothing to fall back on. 1579

X-Q. 59. What you said before was that you could come within a half an inch of it; now I want you to come within that half inch of it, and state what was the height between the floor and under side of the carlines at its inner or wall side, and come within a half an inch of it?

A. The way I got at it was this way: Taken from the floor 16 inches for the height of the seat, the cushion, of course, I could not tell exactly, but then we take the middle berth next, which was 19 inches, then our sash, which is in existence, is 2 feet, taking off one half inch for lap. Above the window is a roof plank now in existence, 12 inches wide, and below that a panel that I remember to be about 6 inches, that is let into the roof- 1580

- 1581 plank, and with the top window girt shows $7\frac{1}{2}$ inches in the clear. Allowing one inch play for the edge of the hinged seat back or middle berth, it makes the following:

	inches.
Height of seat.....	16
“ “ middle berth, 19 inches, add play $\frac{1}{2}$ inch.	$19\frac{1}{2}$
“ “ window 24 inches, less $\frac{1}{2}$ inch lap.....	$23\frac{1}{2}$
“ “ panel and rail.....	$7\frac{1}{2}$
“ “ roof and plank 12 in., less carlines $1\frac{1}{2}$ in.	$10\frac{1}{2}$
Total inches.....	77

- 1582 Equal to 6 feet 5 inches, the inside height.
 X-Q. 60. Where are now these different parts of that old sleeping car that you have enumerated?
 A. They are up in the shop, about the company's premises.

X-Q. 61. These parts, as I understand you, all came from the same car, which was the first car that you have described, is that right?

A. Yes, sir.

X-Q. 62. Are any parts of the second car that you have described in existence?

- 1583 A. I think not, and if they are I don't know it.

X-Q. 63. What became of that second car?

A. It was torn up and destroyed here. I can't tell exactly when, as to the year. It was somewhere about '48 or '49.

X-Q. 64. How long was it after the destruction of the last of those two cars before another sleeping car of any kind ran on the Cumberland Valley Road, or how long was it after the last of those cars ceased running before any other sleeping car was run on that road?

- 1584 A. I don't know that any other sleeping cars were ever run on the road.

X-Q. 66. There are sleeping cars running on the road now, are there not?

A. I have never seen any.

X-Q. 67. You know, do you not, that the modern patented sleepers are running on the Cumberland Val-

ley Road regularly, and have been for a number of years, do you not?

A. No, sir, I don't know.

1585

X-Q. 68. You know, do you not, that no cars with sleeping devices of any kind in them ran on the Cumberland Valley Road for a number of years after the destruction of those two old sleeping cabooses you have described, some forty years ago, for a great many years after such destruction?

A. I don't know of any sleeping cars having run on that road since those old sleeping cars went out of use, except a show car I seen last summer.

X-Q. 69. You were just as familiar with the Cumberland Valley R. R. for 15 years after the destruction of those sleepers as you were before their destruction, were you not? 1586

A. I was for that length of time.

X-Q. 70. And during the 15 years after the destruction of those sleeping cabooses there was no cars of any kind run on the Cumberland Valley R. R. arranged with any kind of sleeping devices, is that so?

A. I would not like to say whether it is so or not. I didn't see any or know of any.

Adjourned to Thursday, Sept. 29th,
1881, at 8 o'clock, A. M. 1587

CHAMBERSBURG, PENN.,

Sept. 29th, 1881.—9 o'clock, A. M.

Met pursuant to adjournment.

Counsel appearing as before.

JACOB SHAFFER'S CROSS-EXAMINATION CONTINUED. 1588

X-Q. 71. Could the window sash in those two cars be raised and lowered as ordinary sash?

A. They could?

X-Q. 72. The passengers who lay down in those cars

went in and lay down with their clothes on, did they not?

1589 A. They did, with the exception of their coats and boots and hats.

X-Q. 73. Was there any water closet in those cars, and if so where was it located?

A. There was one in each car, in the ladies' apartment on the side of the car, opposite to that shown in the model.

X-Q. 74. Was there any stoves in those two cars, and if so, give their location?

A. There was one in each car just centering in the aisle in the centre of the car every way.

1590 X-Q. 75. It was in the apartment then where those two tier of berths were placed, was it?

A. Yes, sir.

X-Q. 76. How wide was this upper hinged shelf or bunk?

A. It was 19 inches.

X-Q. 77. Did the window sash of that car raise up or drop down when you opened the window?

1591 A. They dropped down. They dropped down in a recess behind the inside and outside lining, behind the seat back, and raised up until their bottom edge was even with the window sill, when it was pushed out to rest on the sill.

X-Q. 78. The window sash of those two cars played up and down between the stanchions which supported and formed the side of the car, did they?

A. They did.

X-Q. 79. How wide were those stanchions?

A. The posts were two inches.

X-Q. 80. How thick were the walls of those cars?

1592 A. They vary considerably. The inside measurement of the car was about 7 feet 5 inches, it might vary slightly from that. The lower part of the outside is bulged like an omnibus, and that makes the thickness of the walls vary. The measurement 8 feet at the width of the car from out to out was taken from the outside

surface of the roof planks without the name board, which is attached to them.

1593

X-Q. 81. How long were these bunks?

A. They were a little more than six feet four inches.

X-Q. 82. Did the window sash extend clear to the roof board or truss when raised in position?

A. They could have raised them seven inches, but they never were raised up any more than just to raise them from the sill, so that they could be pushed out on to the sill. The top edge went above the window, opening half an inch.

X-Q. 83. And the top edge then rested against the roof truss, did it?

1594

A. It did not rest against the roof truss.

X-Q. 84. What did it rest against?

A. It rested against a girt which was let in from the outside of the car, and on the inside; the inside lining formed with this girt a recess in which the upper end of the window sash entered a slight distance.

X-Q. 85. Now please state what, if anything, intervened between the top of this window sash and the roof or truss board?

A. There was nothing.

X-Q. 86. Then the sash at its top did go up to the truss or roof board, did it not, when in position?

1595

A. I never knew it to hoist up that far.

X-Q. 87. How far would it have had to hoist up from its position, when in place, to have touched the lower edge of the roof truss?

A. That would have had to be a little over seven inches before it struck that plank.

X-Q. 88. What was the distance between the window sill and the floor of the car on the inside?

A. About 35 inches, as near as I can get at it.

X-Q. 89. What was the width of the hinged back of the seat or middle bunk?

1596

A. 19 inches—the same as the upper one.

X-Q. 90. What was the width of the lower seat or bunk?

A. 19 inches plus a cushioned strip on its front.

1597 X-Q. 91. You are giving your testimony now in presence of the roof of the old Chambersburg car or sleeping caboose, concerning which you testified, are you not?

A. I am.

X-Q. 92. And you have in your hand the sash which you have testified concerning in answer to direct interrogatories?

1598 A. This sash I have in my hand is not the sash that came with the car. After the first set were out this was the second we made in the place of that, which is just like the first in size—the outside measurements are the same.

X-Q. 93. A portion of the old original door frame still remains in one end of this car, does it not?

A. Yes, sir.

X-Q. 94. How wide was the door opening as here shown?

1599 A. Two feet one. The door in the original car was hung on the outside, and two feet two was the size of the original door opening. When I changed the car I put in new door posts and hung the door on the inside. Those door posts made the difference in the door opening of the new posts.

X-Q. 95. What was the distance between the door opening and the under side of the carlines of the car at its highest point?

A. The distance from the door opening to the roof on the outside in the center is eight inches and an eighth; take from that the carlines, an inch and a half projecting inwardly from the roof on the inside, and it gives the dimensions asked for, which is six inches and an eighth.

1600 X-Q. 96. The marks of the location of the transverse partitions, which formed the ladies' apartment of this car, are now plainly visible on the under side of the roof, are they not?

A. They are not visible.

X-Q. 97. Will you please examine the marks which extend transversely across the car at the sixth stanchion

and about ten feet from the end of the car, and state if those are not marks made by a partition which formed the ladies' apartment of this car as you have testified? 1601

A. It would be impossible for me to say that this was the original mark of the partition. The car has been changed inside several times and the partitions moved from place to place. The whole of the car has been changed—I mean—I suppose that the two marks shown upon the roof here are marks of the braces that I had put in at the last lining of the car to strengthen and support the roof.

X-Q. 98. These partition marks that you now see upon the roof of this car are in the exact position where the original partitions forming the ladies' and gentlemen's apartments and the cross seat apartment were located, is not that so? 1602

A. The one at the ladies' apartment—that partition is precisely where I had put the first cross partition to form the ladies' apartment—that is, the right distance from the end of the car.

X-Q. 99. And the other partition marks transversely across the car is the right distance in the two cars to form the apartment for the sections or cross seats, is not that so? 1603

A. I can not answer the same about the other one, as the mark of the other partition is the one made by the cross piece, put in to support the roof, and at the same time answer for the length of the lining, so that it divided this into two parts.

X-Q. 100. Which car was it that you put in the trusses to support the roof, the first or second car?

A. The first car.

X-Q. 101. And at the time you put in the trusses to support the roof, do you want the court to understand that the cross partition extended clear across the car to form the ladies' apartment at that time? 1604

A. I do.

X-Q. 102. And you want the court to understand, do you, that it was necessary to put in a truss to support the roof of that old car at the exact point where there

was a partition running across and extending from the floor to the ceiling of that car?

- 1605 A. Those trusses were not put in until the car was changed to a regular day car with seats clear through it and the berths taken out.

X-Q. 103. And then the trusses were put in at the same place where the partitions were removed?

A. There was no partition there before, but that one in the ladies' apartment extending across the car.

X-Q. 104. How many trusses did you put into that car?

A. Two.

- 1606 X-Q. 105. And you put those trusses in at the points where the partitions were removed, did you not?

A. In only one place.

X-Q. 106. Now don't you know, Mr. Shaffer, that there was no partition at all running from the floor to the ceiling between the two bunks in the middle of the car and upon each side, I mean which extended clear to the top of the car?

A. There was none but the partition that divided the ladies' apartment. I understood from the question that it referred to partitions running clear across the car.

- 1607 X-Q. 107. And you can't point out, can you, any place in this car as it now appears where any partition extended except the one forming the ladies' apartment?

A. That is the only one.

X-Q. 108. When did you take this partition out of the old car which formed the ladies' apartment?

A. I could not give you the year precisely; it was somewhere about '47.

- 1608 X-Q. 109. Those partition marks, just like the ones forming the ladies' apartment, which you now see in this car, six posts or stanchions from the other end, are just the distance from the other end of the car which the partitions were which formed the apartment containing the transverse or cross seats in that old car, are they not?

A. That I am not able to say.

X-Q. 110. And the distance between these two transverse partition marks six stanchions from each end of the car is just the distance occupied by the old car with those two tiers of berths upon each side? 1609

A. I don't understand the question.

X-Q. 111. The distance between these two partition marks which you are now looking at on the roof of this car is the same distance of space as was occupied by the two sets of berths of the old sleeping car, is it not?

A. On that I would say that from the looks of the marks it appears like it had been, but I can't tell whether they were. From the present appearance they look so.

X-Q. 112. These two partition marks, each distant six stanchions from the respective ends of this car, are the only two partition marks or indications of any partitions which are on this car roof, are they not? 1610

A. They are.

X-Q. 113. Will you please attach this sash or have the examiner identify it with your deposition, by marking it Chambersburg Car sash, and entitling it in this cause?

A. I will.

Sash referred to entitled in this cause 1611
and marked Chambersburg Car Sash.
Thomson H. Palmer, Special Examiner.

X-Q. 114. Did the original sash have this metal lifter and sash fastener upon it.

A. The first sash did not have them upon it. It had a strap attached at the top, middle and bottom, covering the centre rail and forming two loops to handle the sash by.

X-Q. 115. Were there any curtains used in connection with those bunks? 1612

A. No, sir.

RE-DIRECT EXAMINATION.

1613 R-D-Q. 116. In this car roof does not the exhibit Chambersburg Car Sash fit widthwise between the posts or stanchions, the upper ends of which are now in place on the car roof?

A. It does.

R-D-Q. 117. Please measure the width of those stanchions or posts and give the dimensions?

A. I do so, and find them two inches.

R-D-Q. 118. What is their thickness?

A. It is three inches.

1614 R-D-Q. 119. The length and width of this roof and the spring of its arch were first ascertained by you from measurements before building the model exhibit Chambersburg Car, were they not?

A. Yes, sir.

R-D-Q. 119½. Also the thickness and width of the roof truss plank, the name board on the outside of the said plank, the size of the carlines and the general structure of the roof was measured and followed by you in making said model, is that not so?

A. That is so.

1615 R-D-Q. 120. Please measure the thickness of the truss plank and state it?

A. Two and a half inches.

R-D-Q. 121. Question repeated as to its width?

A. Twelve inches.

R-D-Q. 122. How thick is the name board?

A. One inch.

R-D-Q. 123. Are the roof boards now nailed on top of this roof the ones that were upon it when the sleeping car first came here, or has a new roof covering been put on the roof during the use of the car?

1616

Objected to as leading and as an attempt and an opportunity furnished the witness of changing his testimony already given.

A. I should say that it was quite likely that the car was covered over two or three times since it first came here. 1617

R-D-Q. 124. You know the roof boards have been changed at least once during that time do you not?

Objected to as leading.

A. Yes, sir.

R-D-Q. 125. What was the original roof lining of the sleeping car when it came here, or was it lined?

A. We called that oil cloth. It was an oil cloth head lining.

R-D-Q. 126. The lining, which you put on when you repaired the car to make a day car of it and put the trusses across where these marks show six posts distance from each end, I understand was made of boards, am I right? 1618

A. You are right; half inch boards.

R-D-Q. 127. Do you remember putting those trusses across to strengthen the roof?

A. I do.

R-D-Q. 128. Those trusses and the board lining were attached to this roof in proper place when you last examined this roof, before to-day—that is, within a few days, were they not? 1619

A. Yes, sir.

R-D-Q. 129. Do you know who commenced the destruction of this roof by taking out that lining?

A. No, sir.

Counsel for defendants now states that the destruction of this roof was commenced in consequence, as he understood, of the removal of the wood yard in which it stands, and that at his request, its demolition was stopped, that the said roof might be preserved for the inspection of the opposite counsel; the removed parts of 1620

1621 the partition were saved and are now produced for the inspection of the witness.

R-D-Q. 130. Please^{*} look at the two trusses now shown to you, try them in the car at the points indicated by the so-called partition marks and say whether they fit the places having the so-called partition marks?

A. They are the ones that were there.

1622 R-D-Q. 130. I notice that the ends of these trusses are slightly distant from the car sides; please explain why that is so?

A. The cause of that is that the roof now sags down, causing the sides to spread.

R-D-Q. 131. When held in place the center of this truss touches the roof, and there is considerable space between the ends of the truss and the roof. Is that due to the spreading of the roof?

A. Yes, sir; it is.

1623 R-D-Q. 132. Was there not at the ends of these trusses, where the board lining was put in by you, a side lining board that ran along past each end of the truss against the car sides?

A. There was.

R-D-Q. 133. Now take the boards and say whether they are a part of this lining?

A. That is a part of the lining.

R-D-Q. 134. Please try the boards between the ends of the car and the first so-called partition mark, and say whether it fits?

A. It does.

1624 R-D-Q. 134. Try *this* board between the two partition marks and say whether it fits the place?

A. It does.

Counsel for defendants states that he saw these trusses attached to this roof at the points indicated by the so called partition marks with the board between them;

and also saw them just as the workmen had finished tearing them from the roof within the past ten days, and immediately requested that no further demolition of the roof should take place, for the reason before stated. 1625

Complainants' counsel objects to the above statement as incompetent and irrelevant.

R-D-Q. 135. Please measure the width and depth of those trusses and name it?

A. Two and one half by four inches. 1626

R-D-Q. 136. This sleeping car described has been called a caboose, will you please state whether either of the sleeping cars had any resemblance to a caboose?

A. Not the slightest that I know of.

R-D-Q. 137. Were not those sleeping cars you have testified about a very ornamental car in their appearance and finished as finely as a carriage or a road coach?

A. Yes sir, as fine as any car I have seen lately outside and inside.

R-D-Q. 138. Did you ever rest in an upper berth in them? 1627

A. I have.

R-D-Q. 139. Was it a comfortable apartment for sleeping purposes?

A. It was to me. I know several times I tried it and preferred it to the other berths.

R-D-Q. 140. When the upper berth was raised up to its angular position was it the custom to put the long girths in behind the upper berth?

A. Yes sir.

R-D-Q. 141. Did you not about the year 1868 give your deposition concerning these sleeping cars in use upon the Cumberland Valley R. R. as you have testified in behalf of George M. Pullman, one of the complainants in this case, under examination by Samuel S. Fisher, his counsel? 1628

A. I did.

1629 R-D-Q. 142. Did you not at that examination produce one of the original berths of the first car, which was filed in evidence at that time?

A. I did.

R-D-Q. 143. How wide was that berth ascertained by measurement made during that deposition?

A. 19 inches.

R-D-Q. 144. Did you make a model of the first sleeping car and put it in evidence at that time?

A. Yes, sir.

1630 R-D-Q. 145. Will you produce the bolt of the original car which you say is now in existence.

A. I do.

Bolt referred to filed in evidence, and marked Chambersburg Car Berth Bolt. Thomson H. Palmer, Special Examiner.

R-D-Q. 146. Why was the bottom of the sash made of solid wood?

A. So that when it was raised up a man lying on the middle berth could not kick the glass out.

1631

RE-CROSS EXAMINATION.

R-X-Q. 147. Do you pretend to say that the two sets of partition marks appearing on the roof boards of this car were made by the braces you have described.

A. I do.

R-X-Q. 148. That portion of the brace which came in contact with the roof of the car was a flat surface two inches and a half wide, wasn't it?

A. Yes, sir.

1632 R-X-Q. 149. The two sets of partition marks which extend transversely across this car are two parallel marks an inch and three-eighths wide, are they not?

A. Those two marks, an inch and a quarter wide, represent the two pieces that the head lining was nailed to, which pieces were nailed on the sides of the

truss, and the space of two and one half inches between those one and a quarter inch marks represents the space occupied by the thickness of the truss. 1633

R-X-Q. 150. Where are those pieces that were nailed on here ?

A. I don't know, but they must be somewhere here, but there is one on the end of the car attached, which is just like that. It is one and a half inch deep and one and a quarter inch thick.

R-X-Q. 151. There are carlines on this car within two inches of this so-called brace, of the same dimensions in thickness of this piece which you say was nailed onto the brace, are there not ?

A. They are about two inches and a half from that. 1634

RE-RE-DIRECT EXAMINATION.

R-R-D-Q. 152. But notwithstanding there are such car lines, it was necessary, was it not, to have the pieces on the sides of the braces to nail the extreme ends of the boards to ?

A. Not only that, but also to fasten the moulding underneath the ends of the boards to.

JACOB SHAFFER. 1635

Attest :

THOMSON H. PALMER,
Special Examiner.

ALEXANDER H. McCULLOH, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Q. 1. What is your name, age, residence and occupation ?

A. Alexander H. McCulloh, age, 65 last April ; residence, Chambersburg, Pa., and I am now general ticket agent of the Cumberland Valley R. R. I went into the employ of that R. R. in 1851 as conductor, and afterwards became clerk for the superintendent and 1636

ticket agent of the company, and afterwards conductor and general ticket agent.

1637

Q. 2. Were you not about the Cumberland Valley R. R. from the period from about 1838 to about 1842?

A. I was a great deal about the railroad from that time up to about 1841. I was well acquainted with the superintendent and employees of the road, and had an uncle who was acting as conductor at that time, my father being president of the road, and at times when my uncle was sick or wished to remain off, I took his place as conductor.

1638

Q. 3. Do you remember of a sleeping car being brought here for use upon the Cumberland Valley R. R. and put into use upon said R. R. during the early part of that period, and about 1838?

A. I do. I recollect when the Cumberland Valley R. R. was first opened, the cars then were run by a stage company. Shortly afterwards the Cumberland Valley R. R. took possession of the road, and run it themselves, bringing here for the purpose two cars from Philadelphia, one of which was a sleeper. When the cars came here, before they were run, I examined those cars, being among the first in town to see them.

1639

Q. 4. Do you remember, and if so, please describe the internal arrangement of the sleeping car?

A. I do remember it. It was a long car, painted a sort of a brown, with the panels outside convex, and finished around the shadings with bronze or gold leaf, and made a very handsome appearance on the outside as well as on the inside. The inside was divided into first an apartment in which there was a berth, the part making the front of this berth was on hinges to let down, and could be raised up to make a wide berth. In the corner of that apartment there was a water closet, and a seat extending from that water closet to the partition, this partition went clear across the car, and had a door in it and cut off the part we called the ladies' saloon. After passing through this partition there was two rows of berths three berths high, making twelve berths in all, six on each side of the passageway. Be-

1640

yond these berths there were seats with swing backs. These berths were separated by partitions between them, the front edge of which partitions were scalloped out. The partitions went from the floor to the roof, and they were about the same width as the berths, went back to the wall of the car and came out to the aisle, there being one of these partitions at the end of the tier of three berths next to the cross seats, and another such partition between the two tiers of three berths; while the cross partition cutting off the ladies' apartment or saloon came next to the end of the tier of three berths nearest to the ladies' apartment. This was the arrangement on both sides of the car. 1641

Q. 5. Were each tier of three berths each alike? 1642

A. Yes all the same formation.

Q. 6 Please describe one tier of berths?

A. The seat was the first berth and its cushion was removable, and the back of that seat constituted the second berth. It was swung on hinges and at night could be raised up and was fastened by bolts into the partitions. The third or upper berth had a hinge at the back part which went into the partitions. In day time this berth was drawn back. The spreads and small cushions used for pillows were put behind it, and it was held up by small pieces of girthing to a strip of wood on the top of the car. At night this upper berth was put down and was held by girthing near each end, that fastened on hooks attached to the bottom of it, and was also secured by two bolts that went into the partitions. 1643

Q. 7. When you say this upper berth was drawn back in the day time, do you mean it was swung upward on its hinges?

A. Yes swung up on its hinges upward so as to stand at an angle.

Q. 8. Did you ever rest in a berth in this car while it was running on the R. R.? 1644

A. I did.

Q. 9. In which berth?

A. The upper berth.

Q. 10. Did you find it a comfortable berth ?

1645 A. Well so far as the berth was concerned you could lie there very comfortably, but the road was very rough.

Q. 11. Where were you employed during the years '46, '47, '48, and '49 ?

A. In '46, '47, '48 and '49, I was in the employ of the Commissioners of Franklin County.

Q. 12. Do you remember of riding in this sleeping car during that perion and occupying one of its berths from Chambersburg to Harrisburg ?

1646 A. I recollect perfectly in one of those years riding on this sleeping car I have named. I started from Chambersburg for Harrisburg and got into this upper berth, and at Carlisle, on account of some friends that were with me, I got out.

Q. 13. Do I understand you that these partitions between the berths were provided at each end of the berths so as to isolate them one from the other ?

A. Yes, sir.

Q. 14. In raising the upper berth towards the roof in the day time, would it raise up until its front edge struck the roof, to have the short girth straps buttoned on to it ?

1647 A. It would ; I have seen them press them up very hard to get them on.

Q. 15. When the fastening was attached did the front edge of the upper berth remain against the roof ?

A. No, sir ; it dropped down some three or four inches away from the roof.

Q. 16. Please look at the model exhibit Chambersburg Car now shown to you, and say how accurate its construction is compared with the car you have testified to as having been in use upon the Cumberland Valley R. R.

1648 A. That model is not like the car that first came here, which I have been speaking about in one or two particulars. The partitions between the berths in the middle of the car were scolloped out on their front edge so as to make them ornamental. The upper berth in the car was held up by bolts and the straps shown, and

had no cleats as in this model. In other respects the model is accurate.

Q. 17. From 1841 to 1851 were you much about the R. R. offices, shops or depots? 1649

A. Very little during that time.

Q. 18 Look at the exhibit Chambersburg Car Window and say whether you remember in that sleeping car window sash having their lower parts constructed with a wooden panel substantially like it?

A. I do recollect that. They had a panel below like that.

CROSS-EXAMINATION.

1650

X.Q. 19. Who built that car with those sleeping bunks or shelves in it that you have described?

A. That is more than I can tell. I think it came from the city of Philadelphia.

X-Q. 20. As I understand you there were no pillows in the car but only round stuffed cushions, is that correct?

A. I mean that the pillows were not the shape that we make now days. They were round cushions the length of the width of the berth stuffed with feathers. 1651

X-Q. 21. What were they covered with?

A. They were covered with, I suppose, a sort of a curtain calico. It was figured stuff and cotton goods.

X-Q. 22 And when persons got tired they would go in and lie down on these bunks or shelves, as you would on a sofa, is not that about it?

A. Well, I can say this, that those berths were kept specially for the stage passengers from the west, and the conductors would not allow local passengers to get into them until these passengers were first provided with berths. I recollect perfectly on one occasion that I 1652 was in one of these cars, of one of the conductors quarrelling with a local passenger, who had taken a berth, to get him out of it, and put a stage passenger into it.

X-Q. 23. Then, as a matter of fact, those shelves or bunks were simply used and designed for passengers

1653 worn out with stage travel to lie down and obtain a change of position and rest themselves from the cramped position they had been in from long stage riding, isn't that the way of it?

A. Well, I have no doubt that that was one of the reasons why the company provided them.

X-Q. 24. It was much more or it was entirely a place, I mean those twelve shelves or bunks, for each passenger to turn in and straighten out and rest himself, than for any purpose of furnishing a sleeping accommodation, wasn't it?

1654 A. Well, I know it was intended for sleeping accommodations, for I know they called it a sleeping car when it first came here, intended for sleeping accommodation for passengers that were wearied coming over the mountains from the west and going east.

X-Q. 25. There were a good many more passengers who sat up in that car on the cross seats right directly adjoining the four tiers of berths than there were passengers who could lie down in the berths, wasn't there?

1655 A. Well, that would depend entirely upon the number of passengers who came on the stages from the west. There were two stage lines carrying nine passengers in each inside, and some outside, and there would always be some local passengers.

X-Q. 26. Are you perfectly confident so as to swear positively that the partitions between the two tiers of berths extended clear down to the floor under the seats?

A. The partitions were fastened to the floor and to the roof and to the side of the car.

X-Q. 27. Do you recollect that of your own knowledge, or do you recollect it from hearing some person say so?

1656 A. I recollect it of my own knowledge, having made a very close examination of that car when it first came here.

X-Q. 28. Then you swear positively, do you, that the boards that were put up between these two middle

tiers of shelves extended clear back to the walls of the car?

A. Yes, I think I can swear positively they did.

1656

X-Q. 29. How deep were the scollops in the front edges of these partitions?

A. That is more than I can tell. I never measured them.

X-Q. 30. Do you think they were ten or twelve inches deep?

A. No.

X-Q. 31. Eight inches?

A. Well, I can say certainly they were not eight inches. I don't believe there was any part of them that projected over an inch and a half.

1668

A. H. McCULLOH.

Attest:

THOMSON H. PALMER,
Special Examiner.

Adjourned to Friday, September 30th,
at 10 o'clock, A. M.

CHAMBERSBURG, Pa., September 30th, 1881.

1659

Met pursuant to adjournment.

Counsel appearing as before.

THEODORE B. WOOD, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows:

Q. 1. State your name, age, residence and occupation?

1660

A. Theodore B. Wood; age, 62; residence, Chambersburg, Pa., and occupation, machinist.

Q. 2. Were you ever employed by the Cumberland Valley R. R. Co., and if so, when?

A. I was, from January, 1847, to the summer of '57,

part of the time as machinist and part of the time as master mechanic.

1661 Q. 3. When you entered the employ of said company in 1847, did it have in use upon its road any sleeping cars for the sleeping accommodation of its passengers?

A. Yes, sir, at least two that I know of.

Q. 4. How long did they remain in such use upon said road?

A. Until about 1850.

Q. 5. Will you please describe the inside construction of these sleeping cars?

1662 A. At one end of the car they had ordinary seats for the passengers; in the centre of the car there were two tiers of berths on each side, six berths on a side, three berths one above the other, making twelve berths in the car. They were in the centre of the car. The other end of the car was partitioned off for a ladies' apartment, and contained two lounges or berths. Each of the lower berths was used in the day time as seats for the passengers. The back of that lower seat at night was thrown up to make the middle berth. The top berth in day time was thrown up at an angle, and fastened up by straps, to make room for the persons who occupied the lower berth as a seat. At night it was let down horizontal, so as to form a berth to sleep on. This upper berth was hinged into the partition at the back end of the berth by a hinge that had a journal that went into the partitions, the journal being on the end of a curved shank that fastened the hinge to the berth.

1663 Q. 5½. Was the middle berth or seat back hinged anywhere?

A. Yes; it was hinged to the side of the car.

1664 Q. 6. These partitions you speak of, where were they situated?

A. There was a partition between each tier of berths, and a partition at each end of the tiers of berths.

Q. 7. How wide and high were these partitions?

A. The partitions were about as wide as the berths

were when in a horizontal position, and went from the floor to the ceiling, and clear back to the side of the car. 1665

Q. 8. Were they solid fixed partitions?

A. Yes sir. They were fastened in place—permanent in the car.

Q. 9. Did not the partition at the end of the tiers of berths towards the ladies' apartment go clear across the car, so as to cut off and form that ladies' apartment?

A. Yes, sir; and had a door in the centre.

Q. 10. Do you remember any straps or gerthing that supported the upper berth when horizontal for sleeping purposes? 1666

A. Yes, sir; each of the upper berths were supported by two straps that resembled saddle girthing. They hooked onto the front edge of the berth to prevent the passenger from falling out.

Q. 11. These straps or girthing took the weight of the passenger, and helped to support him, did they not?

A. Yes, sir.

Q. 12. Do you remember whether these berths had cushions on them? 1667

A. Yes, sir; they were upholstered with cushions.

Q. 13. Were there any pillows for the berths?

A. Yes, sir.

Q. 14. The middle berth was fastened up horizontally when it was to be slept on, I suppose?

A. Yes, sir.

Q. 15. Did you ever sleep or rest in these cars while they were running over the said R. R.?

A. Yes, sir; several times.

Q. 16. Were the pillows carried behind the upper berths when raised in the day time? 1668

A. Yes, sir.

Q. 17. Will you please examine the model exhibit Chambersburg Car, now shown to you, and state how accurately it represents the construction and operation

of the sleeping cars you have testified about having been run on the Cumberland Valley R. R.?

- 1669 A. It is a correct model. I see something hinged in the ladies' apartment on the front of the lounge that I don't remember about. The tiers of berths are correct. I don't remember the shelf in the ladies' apartment, otherwise the model is correct. I remember that the lounge in the ladies' apartment was wider than the berths in the middle of the car.

CROSS-EXAMINATION BY MR. OFFIELD.

- 1670 X-Q. 18. Are you perfectly confident, so as to swear positively that there was a partition running from the floor to the ceiling between each of the two sets of berths in those old cars that you have described?

A. Yes, sir.

X-Q. 19. You will swear positively, will you, that the partitions run clear to the ceiling of the car?

A. Yes, sir.

X-Q. 20. And you will swear positively, will you not, that the partitions went clear to the floor under the seats?

- 1671 A. Yes, sir.

X-Q. 21. You are just as confident, are you not, that the partitions, which you say were between the sets of berths in those two cars, went down to the floor under the seat or lower berth, as you are of any other part of your testimony?

A. Yes, sir.

X-Q. 22. And if you are mistaken as to there being any partitions between the berths under the seats you may be just as badly mistaken in your recollection of the rest of the construction of the car, may you not?

- 1672 A. I am not mistaken.

X-Q. 23. In your connection with the road upon which those cars ran you had nothing to do with the running or operating of cars, did you?

A. No, sir.

X-Q. 24. And until your attention was called to it

lately you had forgotten that there ever were any such cars on the road, let alone their internal construction and operation, had you not? 1673

A. No, sir. I had not forgotten them. I had rode in them too frequently to forget that.

X-Q. 25. Where was the stove in those cars?

A. The stove was in the part that had the day seats. I am not sure whether there was a stove in the ladies' apartment or not.

X-Q. 26. Was there but one stove in the car?

A. I don't remember.

X-Q. 27. You are just as confident, are you not, and recollect just as distinctly, that the stove was in the part of the car which had the day or cross seats, as you are that there were partitions extending from the floor to the ceiling, between the two sets of berths on each side of the car? 1674

A. Yes, sir.

X-Q. 28. Where was the water closet in those cars?

A. I don't think there was any.

X-Q. 29. And you are just as confident, are you not, and recollect just as distinctly, that there was no water closet in either of those cars as that there were fixed partitions running up between the sets of bunks? 1675

A. I don't remember of any water closet being in there.

X-Q. 30. Your recollection of a water closet would be just as good as it would on a small partition, wouldn't it?

A. I don't know that it would. I don't think there was water closets in any cars at that time.

X-Q. 31. Was there any door in the partition between the apartment where these bunks were and the apartment having the cross seats?

A. No, no door. 1676

X-Q. 32. And you could see right from these cross seats into the ends of the bunks, could you?

A. You could see into the aisle between the bunks or berths.

X-Q. 33. Your recollection is after about this fashion,

is it not, Mr. Wood: You recollect that there was some kind of a car with some kind of a sleeping arrangement
1677 on the Cumberland Valley Road, between 30 and 40 years ago, and that the bunks or shelves were hinged loosely in some way to the side of the car, but you do not recollect distinctly, so as to swear positively, how this arrangement was made?

A. I remember distinctly, and can swear positively, that there were cars on the Cumberland Valley Road that had 12 berths in each car, six on a side, for sleeping purposes, and have slept in them myself.

X-Q. 34. Where were you riding when you lay down in those berths?

1678 A. From Chambersburg to Harrisburg.

X-Q. 35. Were you working by the day for that company at the time that you knew anything about those cars, and how much did you receive a day?

A. Part of the time I worked by the day and part of the time on a salary, when I worked by the day I received \$11 per week, when I worked on a salary I received \$1,000 a year.

X-Q. 36. Were you subpoenaed to come here or did you come voluntarily?

1679 A. I was asked to come by this gentlemen (pointing to defendants' counsel), I don't know his name. I was not subpoenaed.

RE-DIRECT EXAMINATION.

R-D-Q. 37. Did not the cross partition cutting off the ladies' apartment, divide these cars into two parts?

A. Yes, sir; a gentlemen's part and a ladies' part.

1680 R-D-Q. 38. Beside the 12 berths, six on a side, in each of the sleeping cars as stated in your answer to X-question 33, do you remember distinctly and swear positively to the other parts of these sleeping cars that you have described in your direct testimony here?

A. I swear positively to the evidence I have given,

and I remember the things that I have described as being in those cars.

T. B. WOOD. 1681

Attest:

THOMSON H. PALMER.

Special Examiner.

Adjourned to Saturday, October 1, 1881,
at 10 o'clock, A. M.

OCTOBER 1, 1881.

Met pursuant to adjournment.

1682

Counsel as before.

Adjourned subject to notice.

PETERSBURG, VA., Oct. 4th, 1881

Met pursuant to notice.

Present:

1683

H. S. TOWLE, Esq., for Complainants.

H T. MUNSON, Esq., for Defendants.

WILLIAM H. MCGEE, a witness produced on behalf of defendants, having been duly sworn, testified as follows:

Q 1. State your name, age, residence, and occupation?

A. Wm. H. McGee, age 54, residence, Petersburg, 1684 Va., and occupation, conductor on Petersburg R. R. extending from Petersburg, Va., to Weldon, N. C.

Q. 2. When did you enter the employ of that R. R.?

A. In 1847, and have remained continuously in its employ ever since.

1685 Q. 3. In 1847, when you entered the employ of said R. R., did it have in use upon its road sleeping cars with sleeping accommodations for passengers?

A. Yes, sir; there were two of those cars.

Q. 4. How long did they remain in such use on that road?

A. Some seven or eight years, from 1847 to about 1853.

Q. 5. Did you ever ride in those cars during that period of time?

A. Yes, sir; a great many times.

1686 Q. 6. Did you ever have charge as conductor of trains of which these cars formed a part?

A. Yes, sir; in '52 and '53 frequently.

Q. 7. Did you, during the time you conducted the trains, see the berths in those cars occupied by passengers for sleeping purposes, while the cars were running over the road?

A. Yes, sir.

Q. 8. Did you ever see all of the berths occupied at any one trip?

1687 A. Yes, sir; and there were times when more passengers applied for sleeping accommodations than could be accommodated.

Q. 9. Did you yourself ever occupy a berth in either of the cars to rest in?

A. I have laid down on the berths to rest many times.

Q. 10. Will you please describe the construction of these sleeping cars run and used upon the Petersburg R. R. as you have testified?

1688 A. The car was a very large car, and long—55 or 60 feet from outside of platform to outside. There was an aisle through the car with berths each side of the car. The berths were six feet long and three berths in a tier, so that three persons could lie down in the night or sit up in the day arrangement of them. The berths were so arranged that the middle and upper ones could turn up and down; the lower berth was stationary. The middle berth formed a back to the lower seat or berth.

Q. 11. Was there any ladies' apartment in the car?

A. Yes, sir.

Q. 12. What made it?

1689

A. There was a partition put across the car to form that ladies' apartment.

Q. 13. How many tiers of berths were there in the ladies' apartment?

A. There were three tiers.

Q. 14. Anything else besides berths in the ladies' apartment?

A. There was a water closet in it.

Q. 15. How many tiers of berths in the ladies' apartment on the side of the car having the water closet?

1690

A. There were three berths.

Q. 16. Do you mean three berths forming one tier?

A. Yes, sir, that is what I mean.

Q. 17. How many tiers of berths on the side opposite the water closet in the ladies' apartment?

A. There were six berths, or two tiers.

Q. 18. You say the middle berth, or seat back, could turn up and down; what was it fastened to so that it could turn up and down?

A. That was fastened to the body of the car.

Q. 19. What position had it when it was to be slept upon?

1691

A. It was raised up horizontally or parallel, with the floor of the car.

Q. 20. What was the position of the upper berth when it was to be slept upon?

A. It was the same position.

Q. 21. When the upper berth was turned up in the day time or for day use, where did it go to?

A. It pushed back to the ceiling or top of the car—pushed up against the top of the car.

Q. 22. Was it hinged to the side of the car?

1692

A. It was hinged by hinges to the side of the body of the car.

Q. 23. Did these berths have cushions upon them?

A. Yes, sir.

- Q. 24. Were the cushions of the top berths fast or loose?
- 1693 A. They were loose.
- Q. 25. What kept them from being thrown out of the berths when the car was running upon the R. R.?
- A. There was a moulding around the berth which they fitted in. The moulding extended higher than the edge of the berth and kept the cushion from joggling out.
- Q. 26. Did the berths have pillows?
- A. Yes, sir, they had pillows.
- Q. 27. Where were they stored when the car was arranged for day passengers?
- 1694 A. They were kept up in the upper berths.
- Q. 28. Do you mean behind it when they were pushed up?
- A. Yes, sir; they laid them on the berth when it was down and pushed it up with them on it.
- Q. 29. Do you mean pushed it up against the roof?
- A. Yes, sir.
- Q. 30. How were the upper berths fastened up against the roof in day position and on a level in night position?
- * 1695 A. They were fastened back with rods.
- Q. 31. Did not the ends of some of these berths come against partitions on the ends of the car and the water closet bulk head?
- A. Yes, sir.
- Q. 32. Did they have rods to fasten them next to the partitions?
- A. No, sir, they had bolts, they were old fashioned door bolts.
- Q. 33. Were the middle berths fastened by bolts where they came against the partitions?
- 1696 A. Yes; all that came against the partitions or ends of the car had bolts to fasten them.
- Q. 34. How were the ends of the seat backs or middle berths held up where they didn't come next to the partitions?
- A. They were held up by a strap or rod.

Q. 35. This tier of three berths in the ladies' apartment which you say was between the water closet and the cross partition dividing the car, had a partition or bulkhead at each end of those berths, had it not? 1697

A. Yes, sir.

Q. 36. Did both ends of the middle and upper berths in that tier have house bolts to fasten them?

A. Yes, sir, they were fastened up by those house bolts.

Q. 37. I understand your description to mean that the berths in these cars were on each side of a central aisle, against the side walls of the car and parallel with them; is that correct? 1698

A. Yes, that is the way they were.

Q. 38. Do you know what the reason was for putting sleeping cars on the Petersburg R. R., at so early a date?

A. No, sir, I do not.

Q. 39. Please look at the model, Exhibit Petersburg Car, now shown to you, and say how correct the construction of that model is, as compared with the construction of the sleeping cars you have testified were used upon the Petersburg R. R.?

I think that is a perfect model of those cars; if there is any difference I can't detect it. 1699

Q. 40. I notice that the roof of this car as illustrated by the model has a very considerable curve, do you remember that to have been so in the old cars?

A. Yes, they had a very considerably arched roof.

Q. 41. Do you remember whether those sleeping cars were very high and very wide for those days?

A. Yes sir, they were.

Q. 42. I call your attention to the iron rods in this model which hook on the edge of the upper berth when it is level, and on its face to hold it in the inclined position with its front edge against the rafters. Do you remember those rods so used in the old sleeping cars? 1700

A. Yes, sir, I remember those rods used in that way.

Q. 43. In the cars themselves, do you remember

straps running from the upper berths and holding up the free ends of the middle berths, as in the model?

1701 A. They were straps in the car like those or iron rods, I don't remember which.

Q. 44. Were the sleeping accommodations of those cars comfortable and satisfactory?

A. They were very comfortable, but I don't think they were very satisfactory to the travelling public from the fact they could not undress.

Q. 45. Was not the accommodation afforded to travellers during the time those sleeping cars were run considered a luxury in R. R. travel?

1702 A. Oh! yes; it was.

CROSS-EXAMINATION BY MR. TOWLE.

X-Q. 46. Please state when your attention was first called to these old sleeping cars; that is, with a view to your being examined as a witness?

A. It must have been about three months ago, when Mr. Lumsden said to me, Mr. Munson would want my affidavit.

1703 X-Q. 47. Did Mr. Lumsden then first call your attention to these old cars?

A. He did in regard to affidavits.

X-Q. 48. This you state was about three months ago?

A. Yes, about three months ago, somewhere about that.

X-Q. 49. Did you have any extended conversation with Mr. Lumsden, at that time or at any time since, with reference to the matter?

A. No, sir.

1704 X-Q. 50. Who have you conversed with about these cars aside from Mr. Lumsden?

A. Mr. Lumsden and I didn't speak but very few words about the car. I met Sykes and had some conversation, but nothing about the building of the car—the construction of the car.

X-Q. 51. Who else have you talked with about these

old cars, aside from Mr. Lumsden and Mr. Sykes, as mentioned?

A. I don't think I have to any one except Mr. Munson (Counsel) who called yesterday to see me about what I knew and about giving my testimony. 1705

X-Q. 52. Was the conversation that you had yesterday with Mr. Munson the first conversation that you ever had with him about these old cars?

A. Yes, sir.

X-Q. 53. Did you not see Mr. Munson when he was here sometime ago in reference to this same matter?

A. Mr. Munson called to see me and I was sick. I do not think there was anything said about the car. He did not stay over five minutes. 1706

X-Q. 54. When did you first see this model Exhibit Petersburg Car, to which you have referred in your evidence?

A. Yesterday evening.

X-Q. 55. You have stated that to the best of your recollection these old cars were about 60 feet in length. Will you now state how many tiers of berths were used in them?

A. There was some six or seven tiers on each side, beyond the partition of the ladies' apartment, not including those in the ladies' apartment. 1707

X-Q. 56. How long were these bunks in these cars?

A. Six foot, I believe, they called them. I never measured one.

X-Q. 57. Was there a centre aisle running through the car.

A. There was an aisle or passage running through the car from door to door, with berths on each side of it.

X-Q. 58. You have mentioned a partition which separated the ladies' apartment from the gentlemen's apartment. Please state, to the best of your recollection, how far this partition was from the nearest end of the car? 1708

A. Twelve or thirteen feet, and not over thirteen or under twelve.

1709 X-Q. 59. You have spoken of a water closet in the ladies' end of the car. What was the length of this closet?

A. I should say six feet.

X-Q. 60. What was the internal arrangement of this closet aside from the closet seat?

A. There was a seat about four feet long inside of the closet.

X-Q. 61. Did this seat run lengthways?

A. Yes, it run lengthways.

X-Q. 62. Was there a stove in the ladies' apartment of the car?

1710 A. No, sir.

X-Q. 63. Was this apartment carpeted?

A. I think not.

X-Q. 64. Have you any distinct recollection on this point one way or the other?

A. I do not think there was any carpet. I am confident there was no carpet.

X-Q. 65. How was this ladies' apartment lighted at night?

A. It was either by candle or oil lamps.

1711 X-Q. 66. If lighted by a lamp, where was the lamp placed?

A. For the closet it was inside of the closet, at the back end.

X-Q. 67. Where was the lamp placed in the ladies' apartment?

A. I am very confident it was on the saloon part, between the closet door and the berth.

1712 X-Q. 68. You have stated that these cars had one tier of berths between the closet in the ladies' apartment, and the partition separating this apartment from the gentlemen's part of the car. Are you clear in your recollection that both ends of the berths comprising this tier were secured by bolts fastened into the adjoining partition?

A. Yes, sir; by bolts.

X-Q. 69. Are you willing to swear positively that there was not a space between the ends of the berths nearest

to the closet and the closet partition, and that there was not a short seat at the end of this closet?

A. Yes, sir. There was no seat there. It came flush there. I have pushed those bolts in many times. 1713

X-Q. 70. What did you do when you first entered the employment of the Petersburg R. R?

A. Counting iron rails.

X-Q. 71. How long were you employed in that way?

A. Some four or five years, between four and five, I think.

X-Q. 72. Were your duties, while thus employed, such as to give you any particular knowledge of the cars that were run upon the road?

A. I was with them and saw them every day. 1714

X-Q. 73. I understood you to state that you had charge of the counting of iron rails received by the road, this being your particular department. What interest had you in paying attention to the cars of the road?

A. Well, I had no particular interest, except to be in them nearly every day, and to ride out Sundays sometimes, with the conductors.

X-Q. 74. Your observations then as to the construction of any particular car on the road were only such as might have been made by any casual observer or occasional passenger, were they not? 1715

A. Well, it was rather more, because they were changing the cars, and I paid more attention to those cars than I did to the other cars, because they were unusual.

X-Q. 75. What cars do you refer to by the expression "those cars," in your last answer?

A. I meant the sleeping cars of the road.

X-Q. 76. Did you see these sleeping cars frequently?

A. Yes, sir. 1716

X-Q. 77. Were they used so that you could ride in them on Sunday, as mentioned in a previous answer?

A. They were used the same on Sunday as any other day. The mail train carried them on Sunday the same as any other day.

1717 X-Q. 78. Were these sleeping cars used upon day-trains, and if so, explain how the trains were run so that they could be used for sleeping purposes?

A. Some portion of the year they would leave Petersburg for Weldon at 5 or 6 P. M., and at other seasons would leave as late as 8 to 9 in the evening.

X-Q. 79 What did you do for the road after you gave up your work in connection with the counting of rails?

1718 A. Commenced running as conductor on the Greenville and Roanoke R. R., which branches from the Petersburg road at Greenville Junction, 45 miles from Petersburg running to Gaston, 18 miles, worked and controlled by the Petersburg Road.

X-Q. 80. Did your run as conductor on this branch road extend over the Petersburg Road, or was it merely over the branch from Greenville Junction to Gaston?

A. It was over the branch or the Greenville and Roanoke Road, and in case one of the conductors on the Petersburg Road was sick or absent I had to take his run on the Petersburg Road.

1719 X-Q. 81. As near as you can remember what time was it when you first became conductor on the Greenville and Roanoke R. R.?

A I think it was about August 1852

X-Q. 82 This was immediately after you gave up your charge of looking after the rails of the road, was it?

A It was very soon after I won't say immediately—it was somewhere pretty soon after.

X-Q. 83. Were these old sleeping cars ever run upon the Greenville and Roanoke branch of the Petersburg Road while you were conductor there?

A No, sir; no sleeper was ever run there.

1720 X-Q. 84 You have stated that when a conductor on the Petersburg Road happened to be sick, that you were called upon to take his run. How often did this happen?

A. Well, I can't say certainly, but perhaps once a month It would average about once a month.

X-Q. 85. How long were you conductor upon this branch road?

A. About five years

1721

X-Q. 86. Please state what your next employment was on this road?

A. Conductor on the Petersburg R. R., or main line.

X-Q. 87. About what year was it, then, to the best of your recollection, when you commenced running regularly as conductor on the Petersburg Road?

A. 1857.

X-Q. 88. How many miles in length was the Petersburg road from Petersburg to Weldon?

A. Set down at sixty-three miles.

X-Q. 89. What kind of a track did this road have when you first entered into the employ of the Co.?

1722

A. Part of it was U rail, and the other was what was called flat bar rail.

X-Q. 90. What portion of the track at that time was flat bar or strap rail—that is, in '47?

A. I should think there was fifty or fifty-five miles out of the sixty-three was flat bar or strap rail.

X-Q. 91. Did this kind of rail make a smooth or rough road?

A. These rails made a very rough road after use for a short time.

1723

X-Q. 92. For how many years did they continue to use that kind of rail upon the Petersburg road?

A. About 1856 or 1857 all of the strap rail were gotten rid of.

X-Q. 93. Up to 1855 was the principal portion of the track of the Petersburg road made of strap rails?

A. Oh, no, not at '55; nearly all the strap rails had disappeared at that time.

X-Q. 94. How much of the road do you think was strap rail in 1852-53?

1724

A. I think it must have been about 40 odd miles.

X-Q. 95. [No question.]

X-Q. 96. Did the U rail which was used on the road as mentioned by you make a good smooth track, or was it rough?

A. A very smooth and fine track.

X-Q 97. How high were those old sleeping cars in the centre inside?

1725 A. About 9 feet, I should judge.

X-Q. 98. How high were they next to the wall of the car on the inside from floor to roof?

A. About 7 foot, I should judge.

X-Q 99. According to your recollection, then, the curve of the roof must have been two feet in the centre?

A. In that neighborhood

X-Q. 100. How wide were these cars, inside measurement?

1726 A. I should think they were about 9 feet inside; I never measured one, I should judge from appearances they were about that.

X-Q. 101. How wide was the center aisle passing between the tiers of berths?

A. About three feet—in the neighborhood of three feet. They might have been a little over, but not under three feet. I never measured them

X-Q. 102. To the best of your recollection how wide was the upper berths in those cars?

A. About two feet—perhaps a little over two feet.

1727 X-Q. 103. How wide was the lower berth?

A. I think that was some little wider than the upper berth.

X-Q. 104. What was the width of the middle berth?

A. That was the same as the lower, I think

X-Q. 105. Did you ever hear or know from your own observation that the upper berths in one of these cars were stationary when first constructed?

A. I do not know, I don't recollect about its being stationary.

1728 X-Q 106. Are you clear in your own mind that when you first went upon the Petersburg road in 1847 that all the upper bunks in these two cars could be turned up and let down?

A. I never had occasion to examine to that extent; but when I had occasion to run the cars as conductor, they pushed up and let down.

X-Q. 107. May not the upper berths, or at least some of them next to the partitions, have been stationary?

1729

A. No, sir, they were not stationary.

X-Q. 108. Did you go into the ladies' apartment, often?

A. Passed through very frequently from car to car.

X-Q. 109. When was this, before you were conductor upon the branch road or while you were occasionally taking the run of some man that might be sick upon the Petersburg road?

A. It was when taking charge of the train for some conductor who was sick.

X-Q. 110. Did you ever see any of the bunks of the ladies' apartment in use?

1730

A. Yes, sir.

X-Q. 111. Are you clear enough in your recollection that you will swear positively that all three of the upper bunks in the ladies' apartment were so constructed that they could be put up and let down?

A. They would all go up and down—those three upper berths.

X-Q. 112. May it not have been possible from the fact that you only saw these cars and had occasion to pass through them as conductor about once a month, as you have stated, that the upper berth of the tier on the closet side of the ladies' apartment was fixed, and not movable?

1731

A. I am confident it was movable. I recollect taking it down to put ladies up, and helping them.

X-Q. 113. Are you clear that your recollection on this point has reference to the single tier of berths in the ladies' apartment, and not to the two tiers on the opposite side?

A. I recollect on both sides. I recollect on the side where the closet was, and on the other side all were movable.

1732

X-Q. 114. I think in your description you have not referred to any side windows in those cars, were there any?

A. Yes, sir, there were.

X-Q. 115. How many to each tier of bunks?

A. There were three.

1733

X-Q. 116. To the best of your recollection, how high were these windows, and how wide?

A. I rather think the window was higher than it was wide, so as to give each passenger a window. I presume they must have been about 18 inches wide and two feet high. They looked very peculiar. In those days the windows of all cars looked skeleton, that is, the posts were very narrow between the windows.

X-Q. 117. How was the roof in these cars supported?

1734

A. They were supported by curved girders from side to side. I believe they are called carlines to-day.

X-Q. 118. How far apart, to the best of your recollection, were these girders or carlines?

A. I should think about 15 inches. I know they were very close.

X-Q. 119. Of what size would you think they were?

1735

Objection is made to this line of examination as incompetent, irrelevant and immaterial, especially for the reason that this witness has not been qualified as an expert car builder, or in any manner shown to be competent to give the dimensions of the various portions of car structures.

A. I should think they were all of three inches by three, all of that, if no more.

X-Q. 120. You have testified that there were three tiers of berths in the ladies' apartment, and six or seven on a side in the gentlemen's apartment; of these last mentioned how many would have to be entirely supported by the rods or straps secured to the top or carlines of the cars?

1736

A. There would be four or five, according as there were six or seven tiers on a side.

X-Q. 121. You testified, I believe, that you could

not swear positively whether straps or rods were used between the upper and the middle berths?

A. Yes, sir; I couldn't tell whether it was a flat piece of metal or a strap. 1737

X-Q. 122. There were only two rods to each upper berth, and two straps or rods connecting the upper and the middle berths of these last referred to, so that the two carlines to which the upper rods were attached had to support the weight of the two bunks when used for sleeping purposes, is this so?

A. Yes, that is so.

X-Q. 123. Were these cars so constructed that the carline right above the point where the ends of the two tiers on the same side came together had to support two of these rods, or one-half of the weight of two adjacent upper and middle berths? 1738

A. That is so.

X-Q. 124. Were these bunks placed opposite each other; I mean, were the ends of the corresponding berths opposite each other?

A. They were opposite.

X-Q. 125. Then one-half the weight of eight of these bunks when used for sleeping purposes would have to be supported by a single carline? 1739

Objected to as incompetent, irrelevant and immaterial, and as calling for expert knowledge.

A. Yes, sir.

X-Q. 126. Were these carlines heavier or stronger than those in ordinary day cars?

A. Yes, sir.

X-Q. 127. Would, in your opinion, two such carlines as you have mentioned, three by three, hold up the weight of four persons and half the weight of the persons in the adjoining berths over a very rough strap iron road, such as you have described the Petersburg road to have been in those days? 1740

1741

Objected to as incompetent, irrelevant, and immaterial, calling not only for opinion, but for expert opinion as to the strength of materials, which knowledge the witness has not been shown to possess or to be qualified to express.

A. I should think it could, from the curvature of the carlines, and the distance from the side of the car that the rods were hung.

1742

X-Q. 128. You have testified you have seen all of the bunks in a car in use at one time. You then wish to be understood as testifying that you have seen two carlines support the great weight referred to in the last question, in passing over a rough road?

A. Yes, sir.

X-Q. 129. How long do you suppose carlines of the dimensions you have mentioned would stand such a strain?

Same objection repeated.

1743

A. I should think these would stand the strain six or eight years by rebolting—the bolts might wear.

X-Q. 130. Is it not a fact, or may it have been a fact, that these carlines, to which the rods supporting this weight were connected, were much larger than you have described?

That portion of the question calling for an opinion is objected to as incompetent.

1744

A. I don't think they could have been more than three-by-three, or perhaps a little more.

X-Q. 131. Did not these carlines project down from the top of the car far enough to keep the front edge of the upper berth when closed up quite a distance from the roof of the car?

A. Not more than the three inches. The berth would

strike the carlines when up not more than three inches from the top of the car.

X-Q. 132. Have you not as conductor seen these upper berths when turned up, far enough from the roof of the car at their outer edge, so that there was space enough for the passengers to place above the berth parcels and small baggage? 1745

A. It would have to be very small parcels to be placed between it and the roof. I have seen passengers when the berth was let down, put hat boxes and small parcels on it when there were two passengers occupying the three berths.

X-Q. 133. Was there a stove or stoves in these cars? 1746

A. There was one stove in each car.

X-Q. 134. Where was it?

A. It was not exactly in the center of the car, but it was nearer the ladies' apartment than it was the outside door.

X-Q. 135. How was the main part of these cars—that is, the gentlemen's apartment—lighted?

A. By either a candle or oil lamp.

X-Q. 136. You have no distinct recollection then as to which was used?

A. We used both, candle and oil.

X-Q. 137. Were both used at the same time? 1747

A. No, sir.

X-Q. 138. To the best of your recollection, were all of the pillows used put in the upper berths when the car was not in use for sleeping purposes?

A. That was the place for them.

X-Q. 139. And as you remember, they put them there?

A. Yes, sir; that was the place assigned—the upper berths, and they were put there.

X-Q. 140. You have stated that more persons applied for accommodations in these cars than you had berths for. How often did this happen and what was the occasion of it? 1748

A. It was not very often. There might have been a

misconnection and two sets of passengers thrown together.

1749 X-Q. 141. Did it occur once a month?

A. Well, perhaps not. I couldn't say. I don't hardly think it did.

X-Q. 142. Were these cars usually well patronized?

A. Well, pretty freely.

X-Q. 143. Up to what date did you say these cars were used on the Petersburg Road before they were changed over into day cars?

A. 1853 or 1854. The last of '53 or early in '54 they were discontinued.

1750 X-Q. 144. Have any sleeping cars been built or used upon the road since that date?

A. None built by that company. Other sleeping cars have been run upon that road since that date—that is, Pullman sleeping cars have been put upon the road since the war.

X-Q. 145. After these cars were changed into day cars, did any one ever express to you any regret that such a change had been made?

A. Well, I can't say that they did or did not.

1751 X-Q. 146. If there had been any decided public expression in favor of continuing these cars, would you not have been likely to have heard of it?

A. Well, we commenced running a day schedule and there was no necessity for sleeping cars.

X-Q. 147. You stated in your direct examination that these cars were not satisfactory, was not this the general opinion in reference to them?

A. Well, I wouldn't say that that was the general opinion, but a good many were not satisfied because they could not pull off their clothes.

1752 X-Q. 148. I understand you then to testify that your knowledge of these old sleeping cars was acquired during the period that you were acting for the Petersburg Road in receiving iron, and during the period following when you were conductor upon the Greenville and Roanoke branch, during which time, as you have stated, you had charge of a train about once a month, when

one of the regular conductors happened to be sick or absent, is this correct?

A. Yes, sir; I think that is correct.

1753

X-Q. 149. You never had these sleepers under your charge as a part of your train except when you occasionally acted for some absent or sick conductor on the main line, is that so?

A. Yes, that's so.

X-Q. 150. Had you been asked some two or three years ago about the rods, straps, upper bunks, and other details of these old cars before your memory had been refreshed, what would you have said?

Objected to as assuming that the mind
of this witness has been refreshed by
others.

1754

A. In a few hours it would all have come to me very plainly.

X-Q. 151. Did not the fact that these old cars were changed, and no others like them since used upon this road, cause the details of their construction to almost pass from your memory?

A. Well, in a great degree it had passed off, but could be very easily recalled to my memory by thinking about it.

1755

X-Q. 151a. Have you ever given any affidavit in relation to these old sleeping cars you have testified about?

A. No, sir.

RE-DIRECT EXAMINATION.

R-D-Q. 152. Has Mr. Lumsden or any person attempted to put into your mind any ideas about these old sleeping cars?

1756

A. No, sir.

R-D-Q. 153. Did you not fully and at length explain the construction of those old sleeping cars to me upon my simple request to have you tell me what you remembered about them?

A. Yes, sir.

1757 R-D-Q. 154. And was that not done before you ever saw a model?

A. Yes, sir.

R-D-Q. 155. When you say that the upper berths could be turned up and let down, (X-Q. 106.), do you mean turned up against the rafters to get them out of the way, and let down to a horizontal position to sleep on?

A. Yes, sir.

R-D-Q. 156. When you say the car was fifty-five or sixty feet long, do you mean platforms and all?

1758 A. Yes, sir. I mean from bumper to bumper.

R-D-Q. 157. Did you ever measure the sizes of any of the parts of these cars?

A. No, sir.

R-D-Q. 158. Then the dimensions you have given are mere estimates, are they not?

A. Yes, sir; mere estimates.

R-D-Q. 159. Did not the carlines between those to which rods were attached and the roof itself as well as the car sides help to support the berths?

1759 Objected to as suggestive, and relating to a matter not called out by the cross-examination.

A. In my opinion they would.

R-D-Q. 160. You know as a fact, do you not, that berths hung at each end to a carline, as shown in this model, and as you have testified, were embodied in the construction of those sleeping cars, were used for five or six years in carrying passengers upon them without breaking down?

1760 A. I never knew one to break during the five or six years I have testified about.

R-D-Q. 161. When these sleeping cars were taken off was not the R. R. run as a day line in both directions?

A. I think it was.

R-D-Q. 162. The place behind the upper berths where the pillows were put was a sort of a closet shut up by the berth when raised, was it not? 1761

A. Yes, sir.

R-D-Q. 163. Was there any step ladder used for persons to get up into these top berths?

A. Yes, sir.

R-D-Q. 164. Will you please explain what a car track Y is upon which you can turn cars?

Objected to as incompetent, irrelevant and immaterial, and as not proper re-direct examination.

1762

A. It is a railroad track laid in the form of a letter Y, the diverging parts of which corresponding to the arms of the letter Y join the main track forming a triangular track; at each angle of which the track extends outward, each angle also having a switch.

W. H. McGEE.

Attest: THOMSON H. PALMER,
Special Examiner.

1763

Adjourned to Wednesday, Oct. 5, 1881,
at 10 o'clock, A. M.

PETERSBURG, Va., Oct. 5th, 1881.

Met pursuant to adjournment.

Counsel appearing as before.

EDWIN I. THOMAS, a witness produced on behalf of the defendants, having been duly sworn, testified as follows: 1764

Q.1. State your name, age, residence and occupation?

A. Edwin I. Thomas, 58 years of age, residence, Garysburg, N. C., occupation, merchant and farmer.

- Q. 2. Where were you employed during the years 1847, '48 and '49?
- 1765 A. On the Petersburg R. R., running from Petersburg, Va., to Weldon, N. C.
- Q. 3. What position did you hold?
- A. I held the position of conductor of the mail train, except a portion of '49 I ran a locomotive on the same road.
- Q. 4. During this period of time—the years '47, '48 and '49—were there any sleeping cars upon the Petersburg R. R. having sleeping accommodations in them, and run by the road for and used by its passengers?
- 1766 A. There was.
- Q. 5. How many?
- A. Two, one for each of its two regular trains.
- Q. 6. Did your train have one of these sleeping cars regularly attached to it?
- A. It did.
- Q. 7. Did you run that sleeping car on your train from the time it was first built?
- A. I did.
- Q. 8. Did you leave the road in 1849?
- A. I did; the last of November in that year.
- 1767 Q. 9. Were both of the sleeping cars in use on that road for sleeping purposes at the time you left?
- A. Yes, sir. I saw them every day.
- Q. 10. Can you name the conductor running the opposite train?
- A. There were three of us, Bellfield Stiles and George Smith.
- Q. 11. Who was your porter?
- A. Richard Graves.
- Q. 12. Please describe the sleeping car you ran as conductor at the time mentioned?
- 1768 A. The sleeping car was six berths long in the gentlemen's apartment, three berths high, one above the other. There was a partition in one end, cutting off three berths and a water closet on one side, and on the other side there were six berths. There were the same number of berths on one side of the gentlemen's apart-

ment as there was on the other side. In the ladies' apartment there were three more berths on one side than on the other. 1769

Q. 13. What made the lower berths?

A. The seats.

Q. 14. What made the middle berths?

A. The backs of the seats. These backs could be raised up horizontally to be slept on.

Q. 15. What made the upper berths?

A. They were made and put up there first stationary and I did not like them, and I complained to H. D. Bird, the president of the road, to know if they could not be changed.

Q. 16. Why didn't you like stationary upper berths? 1770

A. Because they were in the way of persons' heads in getting up.

Q. 17. Did you hear complaints from passengers resulting from their striking their heads against these upper berths while they were stationary?

A. Yes, sir; from their being in the way, and that caused me to get them changed.

Q. 18. Did you personally have them changed by permission of Mr. Bird?

A. I complained to Mr. Bird and he told me to see Mr. Lumsden and see if it could be done. Mr. Lumsden said he thought he could do it and he would, and he did so. 1771

Q. 19. How did he change them?

A. By rods to hook over small buttons and straps to hook them back to the top of the car.

Q. 20. Do you mean that they were hinged so that they could swing upwards?

A. Yes, sir.

Q. 21. Where the ends of these berths came against the ends of the car and partitions, how were they fastened? 1772

A. By a little sliding bar that went into the wood—a sliding bolt.

Q. 22. This tier of three berths, one above the other, in the ladies' apartment on the side with the water

closet,—how were the ends of the middle and upper berths of this tier fastened?

- 1773 A. By bolts. They had a partition at each end of the berth so that they could use the bolts. The water closet partition was at one end and the cross partition was at the other end. These berths three high were between these partitions and were the length of a man long.

Q. 23. Then I understand these berths consisting of a single tier three berths high, were between the end or bulkhead of the water closet and the cross partition cutting off the ladies' apartment; is that what you mean?

- 1774 A. Yes sir. That is what I intended to say.

Q. 24. And the middle and upper berths of this tier were fastened by slide bolts or slides, as you have called them?

A. Yes, sir.

Q. 25. Were there any pillows for the berths, in this car?

A. Yes, sir, all the top berths had pillows.

- 1775 Q. 26. Am I to understand from your description that these middle berths which swung up to form the berth and down to form the seat back, were hinged to the side of the car?

A. They were.

Q. 27. Were there any cushions on the upper berths?

A. There were.

Q. 28. Fast or loose?

A. Loose.

Q. 29. Did they fall out when the train was running?

A. No, sir. There was a little moulding along the edge of the berth half or three quarters of an inch high which prevented their slipping off.

- 1776 Q. 30. Were the cushions on the middle berth and seat fast or loose?

A. They were fast.

Q. 31. When these upper berths were raised up did their front edges strike against the roof rafters?

A. They did.

Q. 32. Did you see the berths occupied in this sleeping car, run by you as stated, by passengers for the purpose of sleeping in them? 1777

A. I did.

Q. 33. Were the berths in that car frequently all occupied during the trip?

A. More or less all the time.

Q. 34. I mean the berths, all of them occupied during each trip—how commonly was this the case?

A. It was very often the case.

Q. 35. State, if you know, whether there was any preference among passengers for any particular berths and which ones?

A. Young men choose the top berths, old men wanted the lower berths. 1778

Q. 36. Were these sleeping cars considered a luxury by passengers?

A. Yes, more so after I had the top berths to raise.

Q. 37. Please examine the model now shown to you marked Defts' Exhibit Petersburg Car, and state how perfect its construction is so far as it illustrates the car, as compared with the sleeping cars you have testified about, after you had the upper berths changed from stationary ones to movable or swinging ones? 1779

A. It is a good model of the car.

Q. 38. In its construction is it a correct copy?

A. I think so, I don't see anything about it but what is exactly right in every particular. I know it is right in every particular.

Q. 39. I call your attention to the rods which hook or catch onto the front edge of the upper berth to hold it when down to be slept on. Do you remember such rods in the cars you have testified about?

A. I do, sir. They were stationary at first but afterward arranged as shown in the model. 1780

Q. 40. And when the berth was put up with its front edge against the roof in an inclined position do you remember that these rods in the cars hooked or caught on the back of the berth to hold it up?

1781

Question objected to as suggesting to the witness an answer desired by defendants' counsel which, if given, would be in direct conflict with the testimony previously given by the witness.

A. Yes, I remember those rods so used. If I said straps I meant rods.

Q. 41. In a previous answer 19, speaking of upper berths, you said they were hooked back to the top of the car by rods over small buttons and straps. What did you mean?

1782 A. I meant rods, that hooked back on the back of the berths to hold them up.

Q. 42. Do you remember in the sleeping cars that you have testified about, straps hooked or buttoned from the edge of the top berth and to the edge of the middle berth to hold it up to be slept on?

A. Yes, sir. Those were the straps I was thinking about before.

1783 Y. 43. Do you remember in the sleeping cars themselves run and used as you have stated on the Petersburg R. R., a water closet in one corner of the ladies' apartment and the set or tier of three berths high between its end partition and the cross partition cutting off that ladies' apartment from the main body of the car as in this model?

A. I do.

Q. 44. I call your attention to the fact that the upper and middle berths of this set or tier of berths just inquired about have at their ends sliding bolts, to fasten them to the partitions at each end. Was this so in the sleeping cars you have testified about?

A. Yes, sir.

1784 Q. 45. Do you know why the Petersburg R. R., put those sleeping cars into use upon its road at so early a time?

A. The reason as I understand it was because the trains upon the road were almost entirely run at night,

and it was desirable to accommodate the passengers with some means of resting.

Q. 46. Is it the fact or not, that during the time you run those sleeping cars, or before they were put on, that the passengers travelling on the Petersburg R. R., as a part of a through line North, complained of the lack of sleeping accommodation over this route when they could get a night's sleep by travelling over the competing line to Norfolk and by the boats on the bay? 1785

A. Yes, sir; it is the fact.

Q. 46.a. Did you understand that this was the cause, or one of the causes, of putting sleeping cars on this road?

A. I believe it was so. 1786

Q. 47. Was there a door in the partition dividing the car or cutting off the ladies' apartment?

A. Yes, sir.

Q. 47.a. Will you please describe a railroad track Y for turning cars?

Question objected to as immaterial, incompetent and irrelevant, inasmuch as it does not relate to any issue in this cause. 1787

A. It is a railroad track laid down in the form of a letter Y, the diverging parts of which spreading like the arms of the letter Y, joined the main track, and forming a triangular track, at each angle of which there is a switch and the track extends outward as in the picture I make.



Q. 48. When the upper berths were raised up against the roof, were the cushion or mattress and pillows shut up in the space behind them?

1791 A. Yes, sir.

CROSS-EXAMINATION BY MR. TOWLE.

X-Q. 49. You have stated that you were running as an engineer during a portion of the time that you were in the employ of the Petersburg Road. Please state how long you acted as engineer?

A. About ten months.

1792 X-Q. 50. You mentioned the other two conductors employed by the road at the time you were acting as conductor. Do you know what has become of these men, and if so, please state?

A. They are both dead.

X-Q. 51. What has become of Mr. Graves, the porter of your train?

A. He is living; but I do not know where he is now.

X-Q. 52. What number of miles in length is the Petersburg Road?

1793

A. Sixty three.

X-Q. 53. Between what points does this road run?

A. Petersburg and Weldon.

X-Q. 54. When you were employed on the road in '47, '48 and '49 what kind of a track did it have—that is, what kind of rails were used?

A. They had wood rail and flat bar, with the exception of 14 miles of T rail—about that.

X-Q. 55. Was the T rail to which you have referred in your last answer similar to the rails in use on rail-roads at the present time?

A. Yes, sir, the fourteen miles. The rest was wood rail with flat bar. 1794

X-Q. 56. Did you ever know of the use of any rail called a U rail during the time that you were employed on this road?

A. It was the U rail instead of the T rail that I meant.

X-Q. 57. What kind of a track did the wood and flat bar rails to which you have referred, make; was it smooth or rough?

A. When kept in order it was a very smooth track.

X-Q. 58. What was the usual condition of the track during the time that you were on the road, was it what you would call a smooth track? 1795

A. The track was better in the summer months than it was in the winter months.

X-Q. 59. Was not the track during most of the time quite rough, that is, rough compared with R. R., tracks of the present day?

A. It was not as good as they are now with a U rail or a T rail.

X-Q. 60. What I want to understand is whether or not the track during the years that you were on the Petersburg road was of such a character as to cause considerable motion to the cars running on the road? 1796

A. When not kept in proper order in the winter months it was.

- X-Q. 61. Did the cars run even and smooth in the summer?
- 1797 A. Better than they did in the winter.
- X-Q. 62. Please state what your occupation has been since you left the Petersburg road in the year 1849?
- A. Farmer and miller up to 1866. I owned a large manufacturing mill on the Roanoke River. Since 1866, up to the present time, I have been a farmer, miller, and merchant—all three at once. I still own the mill.
- X-Q. 63. You have had no connection with railroad-ing, then, since you left the Petersburg Road in '49?
- A. No, sir.
- 1798 X-Q. 64. Have you had any occasion since 1849 for giving attention to railroad cars, as to their particular construction? By railroad cars I have reference to sleeping cars?
- A. I never was in a sleeping car but once since, and that was from Stanton to Richmond, at night.
- X-Q. 65. You have had no occasion then for making comparisons or recalling to your mind the particular construction of the old sleeping cars on the Petersburg road?
- A. No.
- 1799 X-Q. 66. Have you ever made any affidavit in reference to the old sleeping cars in use while you were on the Petersburg road?
- A. No, never.
- X-Q. 67. When was your attention first called to these old cars and by whom?
- A. Sometime ago, I don't recollect how long. The gentleman here (Mr. Munson) called my attention to them.
- X-Q. 68. About how long ago was this?
- A. I suppose within two or three months ago.
- 1800 X-Q. 69. Did you at that time have any extended conversation about these old cars?
- A. Yes, we had a conversation.
- X-Q. 70. When the defendants' counsel first asked you in reference to these old sleeping cars, what was your recollection in reference to them? Had they to a

very great extent passed from your mind, or was your memory clear as to their construction?

A. I had not thought of the cars for a long time, but as soon as I found out the cars he meant—the sleeping cars that Mr. Lumsden built, they came to my recollection so that I could mark them out, and I told him all about them. 1801

X-Q. 71. Is it not a fact that these old cars had almost entirely passed from your memory until you were reminded of them by conversation with Mr. Munson?

A. I had not thought of them until he came inquiring about them.

X-Q. 72. When did you first see this model marked Exhibit Petersburg car? 1802

A. To-day.

X-Q. 73. Have you had any conversation with any one in reference to these old cars aside from Mr. Munson?

A. Yes, sir; with Mr. Lumsden.

X-Q. 74. When was it that you had any talk with Mr. Lumsden about them?

A. The same time I did with Mr. Munson. Mr. Lumsden came with Mr. Munson to introduce him to me. 1803

X-Q. 75. Did you have any conversation with Mr. Lumsden about the cars?

A. Yes, sir; he talked about the old cars he built. He asked me if I recollected them, and I told him I did.

X-Q. 76. Did Mr. Lumsden ask you about how those cars were constructed, or did he first mention to you their particular construction, especially as to how the upper berths were arranged?

A. Mr. Lumsden asked me if I recollected how the cars were built, and I told him I recollected the cars mighty well, and I told him that I was the man that had the upper berths changed, and he said he knew I was the man that had it done, and that was why he asked me. 1804

1805 X-Q. 77. Did he not ask you whether you remembered the old cars so constructed that the upper bunks could be turned up and let down?

A. I told him I knew that, and that I was the man that had the upper berths changed.

X-Q. 78. I understand, then, from your last answer that Mr. Lumsden did first ask whether you remembered that the upper berths could be turned up and let down?

A. I told him first all about how the upper berths swung up and down.

1806 X-Q. 79. Was there a stove in these cars, and if so, where was it placed?

A. It was somewhere near the cross partition dividing the ladies' and gentlemen's apartments, in the gentlemen's part of the car.

X-Q. 80. As near as you can remember, how near was it to the partition?

A. Somewhere near that partition.

X-Q. 81. How were these cars lighted?

A. By oil lamps.

X-Q. 82. Where were these lamps placed?

A. In each end of the car.

1807 X-Q. 83. Whereabouts in the end of the gentlemen's apartment of the car was this lamp placed?

A. I can't recollect exactly whether it was at the side of the door or whether it was over the door.

X-Q. 84. Do you think there was room enough above the door to place a lamp?

A. We used very small lamps, small cups not more than two inches deep. I think there was.

X-Q. 85. You are unable, then, to state whether the lamp in the gentlemen's apartment was on one side of the end of the car or over the door?

1808 A. I stated just now I didn't recollect.

X-Q. 86. How was the ladies' apartment lighted?

A. In the same way.

X-Q. 87. Where was the lamp in that part of the car placed?

A. In the end.

X-Q. 88. Was it one side of the door?

A. I don't recollect whether it was over the door or on the side. 1809

X-Q. 89. Was there a window in the end of the car partitioned off for the ladies' apartment?

A. Yes, sir; in both ends, the gentlemen's and ladies'.

X-Q. 90. One window or two in each end of the car?

A. Two, one each side of the door. I recollect now that in the gentlemen's apartment, which was much longer than the other, there was a lamp on the gentlemen's side of the cross partition, making two in the gentlemen's side and one in the ladies'. 1810

X-Q. 91. May not the lamp in the ladies apartment have been above the window in that end of the car?

A. I said just now that I did not recollect whether the lamp was over the door or on the side of the door.

X-Q. 92. What was on the opposite side of the door in the ladies apartment? That is, opposite from the tiers of berths to which you have referred?

A. There was six berths.

X-Q. 93. Please describe what was on the side of the ladies' apartment opposite the six berths?

A. Three berths and the ladies' water-closet saloon. 1811

X-Q. 94. As near as you can remember, how long and how wide was this ladies' closet?

A. I suppose sir, it was six feet by two and a half or three feet. I never measured it.

X-Q. 95. How was this ladies' saloon lighted?

A. That was not lighted at all, as far as I recollect.

X-Q. 96. What kind of a carpet was on the floor in the ladies' apartment, if any?

A. None that I recollect.

X-Q. 97. Have you any distinct recollection one way or the other as to there being a carpet in this part of the car? 1812

A. I don't think there was any.

X-Q. 98. You are not positive about it, however, are you?

A. I don't think there was any, but I don't want to say positive.

1813 X-Q. 99. How were the windows placed in these cars, was there more than one window on a side to each tier of berths?

A. Only one, except the row of windows that run along up at the top of the coach.

X-Q. 100. There was only one window then in the side of the car to each set of berths?

A. Yes, that was all.

X-Q. 101. Please describe the row of windows that ran along up at the top of the coach; where were they and how large were they?

1814 A. They ran the whole length of the car, each side.

X-Q. 102. Do you mean to be understood that in the top of the car there was a raised portion with perpendicular sides as can be seen in cars of modern construction and that in each of these sides were placed a row of small windows?

A. I don't mean on the top of the car, I mean down right under the roof of the car.

X-Q. 103. How large do you think these small windows were?

1815 A. I cannot give the dimensions. There was a long row of them. They might have been four or five inches deep.

X-Q. 104. How near together were these windows?

A. Just a moulding between or narrow upright.

X-Q. 105. Do you mean that these windows were in fact a continuous sash extending along the side of the car near the top containing small window glass?

A. They were put along in regular window shape.

X-Q. 106. How were the upper berths secured to the side of the car; above or below this row of little windows?

1816 A. Hinged below the little windows.

X-Q. 107. Could these little windows as you remember them be opened and closed?

A. They could not be opened and closed to the best of my recollection.

X-Q. 108. They were merely used then for lighting purposes and not for ventilation?

A. I always considered them so.

1817

X-Q. 109. How was the roof of these cars supported?

A. By rafters as we call them in houses, small rafters.

X-Q. 110. Please state, as near as you can remember from having run these cars as conductor for over two years and having been inside of them daily, the size of these rafters?

A. Well, sir, I don't think that they could have been more than three by two. They were small. I never measured one of them.

1818

X-Q. 111. As near as you can recollect how many tiers of berths were supported upon these rafters, that is tiers of berths not adjacent to the end of the car or the cross partition?

A. I don't know, I never measured.

X-Q. 112. You know, do you not, that there were several tiers of berths in the central part of these cars that had to be supported by the rods secured to the rafters?

A. I do know that.

X-Q. 113. You also know, do you not, that the ends of these tiers were so adjacent to each other that two of these rods were secured to a single rafter on opposite sides, causing the opposite tiers to have four rods connecting with one rafter?

1819

A. That is so.

X-Q. 114. How were these rods secured at their upper ends?

A. I don't know.

X-Q. 115. You do not know then whether the end of the rod was hooked over the rafter or passed up through the rafter and the roof?

A. I don't know.

1820

X-Q. 116. Is it not your impression that these rods passed up through the roof of the car?

A. I don't know.

X-Q. 117. Is it your opinion then, as a railroad conductor of some considerable experience, that a single

- 1821 rafter of the size that you have described would have been capable of holding up the weight that had to be supported by four of these rods and by the straps securing the upper and middle berths when these berths were occupied by four persons?

Objected to as incompetent, irrelevant, and immaterial; calling for opinion and not facts within the witness's knowledge; further as calling for expert knowledge which the witness is not shown to have or as qualified to possess.

- 1822 A. I don't know how it was constructed around the rafter or over it, but I do know it held them well.

X-Q. 118. As far as you can recollect, may not the rafters to which these rods were connected have been much larger than you have described?

A. I never measured them, but I don't think they were more than two by three inches.

- 1823 X-Q. 119. Was there not room enough above the front edge of the upper berth when turned up so that passengers could put packages and small pieces of baggage up there to have it out of the way?

A. There was no room for baggage or packages, a man might have stuck an umbrella up there.

X-Q. 120. Have you seen the berths in the ladies' apartment in use for sleeping purposes?

A. Yes, sir.

X-Q. 121. Are you positive that all the upper berths in the ladies' apartment could be shut up and let down?

A. Yes, sir.

- 1824 X-Q. 122. You have spoken of the lamp in the ladies' apartment as being possibly at the end of the car over the window; may there not have been beneath this window and on that side of the door a short seat?

A. I never said it was over the window. I said either over the door or alongside of the door. There was no short seat there.

X-Q. 123. May there not have been a short seat just outside of the end of the ladies' closet within the ladies' apartment of the car? 1825

A. None that I have any recollection of.

X-Q. 124. Are you clear in your recollection that no pillows were used except in the top berths?

A. Yes.

X-Q. 125. If the lamp to which you have referred as being either over the door or beside the door at one end of the gentlemen's apartment had been in the latter place would it not have interfered with the berths coming up to that end of the car?

A. No, sir.

X-Q. 126. How could it be so placed as not to interfere? 1826

A. The aisle being wide enough.

X-Q. 127. Was any loose bedding used in these bunks aside from pillows and cushions and mattresses?

A. None.

X-Q. 128. Was it a fact that during the years '47, '48, and '49, there were no passenger day trains on the Petersburg road?

A. It was very seldom we ever had a day train.

X-Q. 129. Were these sleeping cars ever used on Sunday for day travel to your knowledge? 1827

A. We never had any trains on Sunday except regular mail trains; no excursion trains or anything of the kind.

X-Q. 130. They were never used then during the day on Sunday?

A. Not to my recollection, they were used for mail passenger trains. Sometimes they came in at 4 o'clock a. m., and went out at seven or eight in the evening.

X-Q. 131. The upper berths then were only swung up to keep them out of the way of passengers heads, were they not? 1828

A. Yes, sir.

X-Q. 132. Was any extra pay charged for riding on these sleeping cars?

A. None.

1829 X-Q. 133. Were these cars kept clean and in first class condition ?

A. Yes, and all other passenger cars. It was a part of my business to have it done.

X-Q. 134 How well were they liked by the travelling public. Did you ever hear any complaints with reference to them ?

A. Only when they couldn't get them to sleep in.

1830 X-Q. 135. Had you been asked some two or three years ago about the details of the construction of those old cars and before you had had any conversation with Mr. Lumsden and the Defts' Counsel or had seen the model what would you have said ?

A. I would have said just as I have after thinking as I have about it.

X-Q. 136. Were you subpoenaed to attend here as a witness or did you come voluntarily at the request of Mr Munson ?

A. I came at the request of Mr. Munson and was not subpoenaed.

RE-DIRECT' EXAMINATION.

1831 R-D-Q. 137. Would you not attend upon any examination as a witness to give your testimony concerning facts within your knowledge upon simple request, as in this case, and not require to be subpoenaed ?

A. Yes, by any friend or gentleman.

R-D-Q. 138. Did either Mr Lumsden, myself or any person ever prompt your recollection in this matter by first telling you how the cars were constructed ; or were you asked to tell what you yourself remembered about them ?

A. They asked me to tell what I knew about them.

1832 R-D-Q. 139. How large a farm have you ?

A. Four or five thousand acres.

R-D-Q. 140. Capt., do you not remember that in the Summer of 1848 the mail train left Petersburg at 3 P. M., and Weldon at 10 P. M ?

A. I don't recollect.

R-D-Q. 141. About the lamps at the side of the door. You stated that if they were there there was room enough for them because the aisle was wide enough. Do you mean that between the berths when horizontal to be slept upon there was room enough for a lamp between their front edge and the door way? 1833

A. I do.

R-D-Q. 142. Did you mean to be understood that in the length of one berth there was only one window?

A. Yes, sir; there was one.

R-D-Q. 143. Please explain just what you mean by one window to each berth?

A. I meant one window to each berth, one window to each berth. My recollection is that there was one window to each berth. 1834

R-D-Q. 144. May it not be that the car you have in mind, which had a considerable distance between the windows on each side, was some other car than this sleeping car?

Question objected to as leading and suggesting to the witness a desired answer.

A. I think I was mistaken in their being one window in the sleeping car, but I had it in my mind all along, but now I think I am wrong in that. 1835

R-D-Q. 145. Will you please state, if you remember, the size of the flat or strap rail?

A. I think it was about 1-2 or 5-8 thick, and about 3 or 3 1-2 inches wide.

R-D-Q. 146. May you not be mistaken about the row of little windows?

A. No, my recollection is that the row of little windows were in these cars. 1836

RE-CROSS-EXAMINATION.

R-X-Q. 147. Why have you changed your recollection as sworn to in your cross-examination in reference

1837 to there being but a single window in the lower part of each tier of berths, and now state, as you just have, that there was more than one. Was it because you had been looking at and studying over the defendants' model, now before you, which is constructed with three windows for each tier of berths?

A. Well, sir, I will answer it this way. Riding on the trains often with one window to a seat, I got mixed up.

1838 R-X-Q. 148. Please state what has operated to change your mind on this point within so short a space of time as that which has elapsed since you answered on cross examination as to the single window, if it has not come from seeing this model which was covered up at the time you so answered, and was exposed to view when you gave a different answer to the question of defendants' counsel?

A. I am perfectly satisfied that it was an oversight in me about the windows.

R-X-Q. 149. Please explain what has so clearly satisfied you on this point if it was not the model?

A. Not windows enough to the car. I had in mind one seat when it was a berth.

1839 R-X-Q. 150. Are you willing to swear that your seeing this model uncovered had no weight in changing your mind upon this point?

A. I say this, that I was thinking of one seat all the time and not of a berth.

R-X-Q. 151. Your seeing this model then caused you to give a different answer than you first gave as to the windows?

A. I say now, as I said before, that I was entirely mistaken about the windows.

1840 R-X-Q. 152. I insist upon your stating whether or not this model had any influence in causing you to state, as you now do, that you were entirely mistaken as to the windows?

A. None at all. I was thinking about one seat all the time.

R-X-Q. 153. If it was not the model that changed your ideas "as to one seat," what was it?

1841

A. I can only state the same thing as before, I saw that the model had three windows and could have stated so. That did not influence my answer. It was entirely an oversight. Riding on trains with one window to a seat I had one window in my head.

Counsel agree in the statement that defendants' counsel covered this model early in the cross-examination and uncovered it when re-direct questions were asked.

1842

E. I. THOMAS.

Attest : THOMSON H. PALMER.

Special Examiner.

Adjourned to Thursday, October 6th,
1881, at 10 o'clock, A. M.

PETERSBURG, VA., Oct. 6th, 1881.

Met pursuant to adjournment.

1843

Counsel appearing as before.

RICHARD GRAVES, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows :

Q. 1. State your name, age, residence, and occupation ?

A. Richard Graves, age, about 56 ; residence, Petersburg, Va., and I am a train hand for the Petersburg R. R., that runs from Petersburg to Weldon.

1844

Q. 2. How long have you been employed by that R. R. ?

A. Forty years.

Q. 3. About the year 1847 to 1853 were there any sleeping cars used on that R. R. ?

- A. Yes, sir.
- 1845 Q. 4. How many?
A. Two ; one for each mail train.
Q. 5. Did you run on one of those cars?
A. Yes, sir ; I was the porter of it.
Q. 6. Were you the porter as long as the cars ran?
A. Yes, sir.
Q. 7. How many years were those sleeping cars used as sleeping cars?
A. Six or seven years.
Q. 8. Was there a central aisle through those cars?
A. Yes.
- 1846 Q. 9. What was on each side of the aisle?
A. Berths.
Q. 10. Was there any place divided off for ladies?
A. Yes, sir, there was a partition across the car with a door in it.
Q. 11. What was there in the ladies' apartment?
A. Berths and a water closet.
Q. 12. How many berths in the ladies' apartment?
A. Nine.
Q. 13. How many berths in there on the same side as the water closet?
A. Three ; one above the other.
- 1847 Q. 14. Did they come against the water closet at one end?
A. Yes, sir.
Q. 15. What did they go against at the other end?
A. The partition running across the car.
Q. 16. How many berths were there on the other side of the ladies' apartment opposite to that where the water closet was?
A. Six.
- 1848 Q. 17. Out in the large part of the car, or gentlemen's apartment, how many berths were there there?
A. About seven long on each side.
Q. 18. What made the lower berths?
A. The lower berths were what they sat on ; the seats.
Q. 19. What made the middle berths?
A. The backs of the seats.

Q. 20. Could they be raised up to sleep on ?

A. Yes, sir.

Q. 21. What made the top berths ? 1849

A. Overhead we let them down to sleep on, and put them up out of the way.

Q. 22. How were the top berths fastened when they were let down to sleep on ?

A. By little iron rods and buttons fixed to the berths.

Q. 23. Did those same rods hold the berths when they were raised up ?

A. Yes, sir.

Q. 24. When those berths were raised up did the front edges go up against the top of the car ? 1850

A. Yes, sir.

Q. 25. The middle berths, when they were raised up, what held them up ?

A. Straps that strapped them up to the top berths.

Q. 26. Where these upper and middle berths came against partitions or the ends of the car what held them up and down ?

A. They bolted into the partitions and ends of the car by little iron bolts.

Q. 27. Did the three berths in the ladies' apartment between the water closet and the cross partition fasten at both ends by bolts. 1851

A. Yes, sir.

Q. 28. Were there cushions on these berths ?

A. Oh, yes, sir. On the top berth there was a mattress, and on the other berths there were cushions made fast to them.

Q. 29. Were the mattresses on the top berths loose or fast ?

A. Loose.

Q. 30. Would the mattresses on the top berths joggle out when the cars were moving ? 1852

A. No, sir, they had a little moulding on the edge of the top berths which kept them from jostling out.

Q. 31. Were there any pillows for these berths ?

A. Yes, sir, one for each berth.

- Q. 32. Any blankets?
- 1853 A. Yes, sir, they had blankets in the winter season.
- Q. 33. Where were the blankets and pillows carried when the car was to be ridden in as a day car?
- A. We put them in the top berth and shut it up to the roof.
- Q. 34. You mean in a recess or space behind that upper berth?
- A. Yes, sir.
- Q. 35. Did you ever see all the berths in this car full at night?
- A. Yes, sir.
- 1854 Q. 36. How did the passengers get up in the top berths?
- A. They had a little step-ladder.
- Q. 37. Did people like to sleep in these cars?
- A. Oh, yes, sir, mighty well.
- Q. 38. Were these sleeping cars kept clean and tidy?
- A. Yes, sir, kept clean. They were cleaned every trip at each end of the road.
- Q. 39. What were the straps made of that held up the middle berths.
- A. They were made out of leather when the cars first came on the road, and afterwards they were made out of iron.
- 1855 Q. 40. Do you remember whether the passengers used to carry off the leather straps?
- A. I believe they did. That was the cause they had to do away with them.
- Q. 41. Who was the conductor on the other mail train?
- A. Captain Styles.
- Q. 42. Is he living?
- A. No, sir, he is dead.
- 1856 Q. 43. Who was the porter in the other car?
- A. Ruben Pelham. He is dead.
- Q. 44. Who was your conductor?
- A. Capt. Thomas was one, and Capt. Stillman. He is dead, and Capt. George Smith; he is dead, too.
- Q. 45. When you first took this sleeping car do you

remember whether its top berths were stationary or not?

A. Yes, sir, they were stationary.

1857

Q. 46. How long did they remain stationary?

A. About a week or ten days; it might be longer.

Q. 47. But it was a short time?

A. Yes, sir, they found fault with them and altered them to swing up out of the way.

Q. 48. Were all of the top berths in the car altered so that they would swing up to the roof?

A. Yes, sir.

Q. 49. Do you remember what time the trains ran when those sleeping cars were used?

A. Yes, sir. They used to leave Petersburg at 9 o'clock or half past nine at night.

1858

Q. 50. In the summer time did they ever run out of Petersburg about 3 o'clock in the afternoon?

A. Yes, sir, and started back from Weldon about 6 o'clock.

Q. 51. But most of the time these sleeping cars were run in the night, were they not?

A. Yes, sir. We used to leave Weldon then about 10 o'clock at night, and get to Petersburg about day-break.

1859

Q. 52. Did the trains with the sleeping cars run on Sunday the same as any other day?

A. Yes, sir.

Q. 53. Please look at the model now shown you, marked Defts' Exhibit Petersburg car, and say how correct its construction is as compared with the old sleeping car you have testified about?

A. Couldn't be any nigher as I can see if it was the old car itself.

Q. 54. Do you remember distinctly these three berths between the water-closet and the cross partition in the old cars themselves?

1860

A. Yes, sir.

Q. 55. And the way the middle and upper berths are fastened to the partition and water-closet by bolts at each end?

A. Yes, sir.

1861 Q. 56. Do you remember that the upper berths when raised up against the roof stood slanting like they are in the model?

A. Yes, sir; that is just the way they stood in the old car; that made a hole behind them to hold the pillows and mattresses and blankets.

Q. 57. How were the berths that swung, attached to the side of the car so that they could swing up and down?

A. With hinges.

Q. 58. Were the berths comfortable?

A. Yes, sir.

1862 Q. 59. What was done with the straps on the middle berths when the berths were swung out of the way in the day time?

A. Put them up in the top berths on top of the mattresses.

Q. 60. When the upper berths were put up against the top of the car, did the rods button or catch on the bottom of them?

A. They caught on the bottom of them.

Q. 61. Were these berths long enough for a person to stretch out full length in them?

1863 A. Yes, sir.

CROSS-EXAMINATION BY MR. TOWLE.

X-Q. 62. Do you fully understand the force and solemnity of the oath which you have taken in this case?

A. Yes, sir.

X-Q. 63. Have you ever been sworn before for the purpose of testifying in court?

A. Yes, sir.

1864 X-Q. 64. What age were you when you entered the employment of the Petersburg Road?

A. I don't really know exactly what my age was when I commenced. I know what my age is now.

X-Q. 65. In what year was it that you first commenced working for the Petersburg Road?

A. I have been working for them for about forty years.

X-Q. 66. You can't then give the year when you commenced on the road? 1865

A. No, sir.

X-Q. 67. Suppose you had commenced in 1847, the year that you state these sleeping cars were first run, how long ago would that have been?

Objected to as immaterial, incompetent, and irrelevant.

A. I can't count it.

X-Q. 68. How old were you in 1847? 1866

A. I reckon about 18.

X-Q. 69. How many miles long is the Petersburg Road?

A. Sixty-three miles from Petersburg to Weldon.

X-Q. 70. When you first went into the employ of this road, what kind of a track did it have?

A. Flat iron road, small bar.

X-Q. 71. How long did they continue to use that kind of a rail?

A. They used that rail after I went on the road some 12 or 13 years. 1867

X-Q. 72. State as near as you can the time when these rails were replaced by other rails?

A. About in 1851 or '2, somewhere along there.

X-Q. 73. What kind of rails were used after the flat rails or strap rails were taken up?

A. U rails they called it.

X-Q. 74. Which of these rails made the smoothest track?

A. The U rail.

X-Q. 75. Did not the strap rails which you say was in use 12 or 13 years after you came on the road make a very rough track? 1868

A. Tolerable rough in places.

X-Q. 76. Was it not quite rough when compared with the U rail?

A. Oh! yes, sir.

1869 X-Q. 77. Have you ever made any affidavit in reference to these old sleeping cars on the Petersburg Road about which you have been testifying?

A. Yes, sir.

X-Q. 78. When did you make such an affidavit, and at whose request was it made?

A. I made it some time last year before Christmas; I do not know who the gentleman was who asked me to make it.

1870 X-Q. 79. When you were applied to for this affidavit what was first said to you in reference to these old cars by the party making the application?

A. He came around and asked me if I knew anything about these sleeping cars that were run on the Petersburg Road, and I told him I did.

X-Q. 80. Did he not ask you whether you remembered sleeping cars with upper berths so arranged that they could be closed up and let down?

A. He did.

X-Q. 81. Did he describe to you other parts of the car, and ask you if you remembered them?

A. No, sir; he did not.

1871 X-Q. 82. He only asked you then in reference to the upper berths, did he?

A. Yes, sir.

X-Q. 83. Have you no knowledge as to who this party was who called on you, or where he lived?

A. No, sir; I don't know.

X-Q. 84. Who did he say he represented?

A. He didn't tell me anything, or who he represented. He only asked me if I knew anything about the cars and I told him.

1872 X-Q. 85. How long a conversation did you have with this party when he called on you first?

A. About 20 minutes.

X-Q. 86. Did he call to see you a second time?

A. Yes, sir.

X-Q. 87. How long did you talk with him that time?

A. Maybe an hour.

X-Q. 88. Did he read you affidavits that had been signed by other parties?

A. No, sir.

1873

X-Q. 89. Did he tell you what Mr. Lumsden, Mr. Sykes, and others were going to swear to in reference to these old cars?

A. No, sir.

X-Q. 90. Did he have your affidavit prepared when he called to see you a second time?

A. I know he made it out the second time I talked with him.

X-Q. 91. Did he have at either of the times when he called, any model of a portion of these old cars which he asked you to look at?

1874

A. The second time he had it.

X-Q. 92. Did he ask you if that model which he had with him correctly represented a section of these cars?

A. Yes sir, he asked me.

X-Q. 93. What did you tell him?

A. I told him that it resembled it a little, but it was so small I couldn't see much of it. It was a trifling little thing.

X-Q. 94. Did you not tell him that the model was like the old cars as far as it went?

1875

A. I told him some parts of it imitated it a little but not all of the way it didn't.

X-Q. 95. Please state what you told him that you found in the model different from the full sized cars?

A. Well, I believe that it didn't represent the water-closet in the cars we had.

X-Q. 96. In what other ways was this model different from the cars?

A. It was so small I couldn't tell you. It was in the night, and I only looked at it slightly.

1876

X-Q. 97. Did not the affidavit which you then signed refer to this model, and did you not swear to it as a correct representation of one section of the old cars?

Objected to as incompetent, irrelevant,
and immaterial.

1877

A. Yes, sir, I did as far as the model went. It was substantially like the part of the car it showed.

X-Q. 98. Please look at the model now shown you, and marked "Complainants' Exhibit Lumsden Car," and state whether it is the same model, or just like the model, that the gentleman asked you to look at when you gave your affidavit?

Objected, to as incompetent, irrelevant
and immaterial.

1878

A. It looks very much like it, but I don't know whether it is the same one or not.

X-Q. 99. Do you know whether your affidavit was made to be used against the Pullman Company. Was anything said to you about a suit at Baltimore, commenced by that Company?

A. No, sir, there was no such word as that passed. I didn't know anything about a suit or the parties.

X-Q. 100. Were you paid anything for making that affidavit, and if so, how much?

1879

A. The old gentleman gave me two dollars.

X-Q. 101. When was your attention again called to these old cars, after making this affidavit?

A. Maybe in April or May, after Christmas, I think along in the Spring.

X-Q. 102. Who came to you about these cars then?

A. An old gentleman. The same one that called on me before.

X-Q. 103. Did you have much conversation at this time about the cars?

1880

A. No, sir, not much, some ten or twelve minutes. He said he would have to call on me again after awhile and wanted to know where I would be, and I told him.

X-Q. 104. Have you had any conversation with any-

one about those cars since that time, and if so with who and when?

A. No one except the gentleman here, Mr. Munson, (Defts' Counsel.) 1881

X-Q. 105. How long a conversation did you have with Mr. Munson, in reference to the construction of these old cars?

A. Well I suppose we talked about twenty minutes.

X-Q. 106. Have you had any other conversation with Mr. Munson about the cars?

A. No, sir.

X-Q. 107. When did you first see the model marked Petersburg car, which you have stated to be a correct representation of a portion of one of these old cars? 1882

A. About a month ago, when I talked with Mr. Munson; of course I see it to-day when I testify here.

X-Q. 108. Since seeing the model about a month ago, have you been thinking the matter over and endeavoring to refresh your memory as to these old cars?

A. I have thought it over, since I saw the model about a month ago.

X-Q. 109. At the time that you were called on by the party, to get your affidavit, before Christmas of last year, were these old cars clear and distinct in your memory, or had you not forgotten pretty much all about them? 1883

A. No, sir, I had not forgotten about them after they were named to me.

X-Q. 110. Has not your recollection about the construction of these old cars been much clearer since you saw the model about a month ago?

A. No sir, no clearer. My memory is no clearer now than when they were first named to me.

X-Q. 111. Had you ever had any occasion to think about the construction of these cars from the time they were taken off of the Petersburg road until the stranger that you have spoken about, came to get your affidavit? 1884

A. No, sir, I had no occasion to think about them

after they were taken away until they were named to me.

1885

The model was here covered from sight.

X-Q. 112. How were these cars lighted?

A. Oil lamps.

X-Q. 119. How many lamps were used in the gentlemen's apartment?

A. One; over the door.

X-Q. 114. Which door, the door at the end of the car, or the door through the partition?

1886

A. The door at the end of the car.

X-Q. 115. How many lamps were used in the ladies' apartment, and where were they placed?

A. There was two; one was right over the partition, and the other was in the water closet.

X-Q. 116. Do you mean over the door going through the partition?

A. Yes, sir.

X-Q. 117. Was there not a lamp over the outside door by which you entered the car into the ladies' apartment?

A. No.

1887

X-Q. 118. Are you certain that there was a lamp in the water closet in the ladies' apartment?

A. Yes, sir.

X-Q. 119. How many stoves were used in the car and where were they placed?

A. One stove, and that was about the center of the car in the gentlemen's apartment.

X-Q. 120. What kind of a carpet was on the floor of the ladies' apartment?

A. Not any at all.

1888

X-Q. 121. As near as you can remember how far was this cross partition from the ladies' end of the car?

A. It was long enough to contain six berths, three berths high on one side.

X-Q. 122. About how long were these berths?

A. Long enough for one man to sleep on.

X-Q. 123. How many feet long would they have to be in your judgment for a man to sleep upon?

1889

Objected to as calling for an opinion and as incompetent, irrelevant and immaterial.

A. Six feet.

X-Q. 124. Did you mean to be understood as testifying that there were seven tiers of berths on a side in the gentlemen's apartment?

A. Either six or seven.

X-Q. 125. How were the windows arranged on the side of the car. State the number?

1890

A. There were about two windows to a berth, and a little over.

X-Q. 126. Were there any small windows on the side of the car near the top?

A. No, sir. None at all.

X-Q. 127. How many windows at the ends of the car?

A. Nary one.

X-Q. 128. Are you positive that blankets or coverings were used in these cars in the winter season?

A. Yes sir; they were.

X-Q. 129. Were these blankets and the pillows used all kept in the upper berth of each section?

1891

A. Yes, sir.

X-Q. 130. No pillows then to your knowledge were stored away during the day beneath the lower seat?

A. Not in my car that I ran, they were not. I don't know what was done in the other one.

X-Q. 131. Are you positive that all the upper berths in your car were movable, so that they could be swung up and let down?

A. Yes, sir.

X-Q. 132. How large—I mean how thick were the rafters in these cars?

1892

A. They were middling size. I never measured them. They were good size.

X-Q. 133. Are you familiar with measurement by inches.

1893 A. No, sir. I am no carpenter or mechanic, I am a laboring man, I am not familiar with measurement by inches.

X-Q. 134. Do you think these rafters came down five inches from the roof of the car?

A. I am not able to say.

X-Q. 135. Can you say that they were not eight inches thick?

A. I am not able to say.

X-Q. 136. When the upper berths were shut up during the day, was there not space enough above the front edge of the berth for passengers to store away small baggage and parcels?

1894 A. No, sir.

X-Q. 137. How near did they come to the top of the car?

A. They came jamb up, you might put your fingers in.

X-Q. 138. How were the rods holding the upper berths secured at their upper ends?

A. They were fastened up to the ribs of the car. I mean there was something with a head on went into the rafters.

1895 X-Q. 139. Were these rods so placed that two of them were secured to the same rafter on opposite sides?

A. Yes, sir.

X-Q. 140. Were the berths so placed that the same rafter on the opposite side of the car had two rods connected to it?

A. Yes, sir.

X-Q. 141. How long were straps used to connect the upper and middle berths before they were changed to iron?

1896 A. Some four or five months.

X-Q. 142. Are you positive that the upper berth on the watercloset side in the ladies' apartment was not stationary?

A. Of course it was not stationary ; it was hinged like the others.

X-Q 143. What was the length of the watercloset in the ladies' apartment ?

1897

A. It was the same length as the berth was ; the watercloset took up the same length as the berth.

X-Q 144. Was there not a short seat at the end of this watercloset, inside of the ladies' apartment ?

A. No, sir.

X-Q 145. Are you clear in your memory that there was not a short seat at the end of the car, on the opposite side of the door from the ladies' apartment ?

A. No, sir ; there was no seat there.

1898

X-Q 146. At what time was the time-table of the road so changed, that only day passenger trains were run ?

A. I don't know what year it was ; but it was when they took the sleeping cars off.

X-Q 147. You have no recollection, then, as to the year when the sleeping cars were taken off ?

A. No, sir.

X-Q 148. Did they have any day passenger trains on the road during the years '47, 48 and 49 ?

A. No, sir.

X-Q 149. Do you remember of their running any Sunday day passenger trains between the years '47 and 53 ? that is, were these sleeping cars run as day cars during this time on Sunday ?

1899

A. Yes, sir, they did.

X-Q 150. After these cars were taken off from the road and sleeping cars not used, did you hear anybody complain because this had been done ?

A. Yes, sir, I did.

X-Q 151. Were these old sleeping cars liked while in use, or did passengers complain about them as being unsatisfactory, because they could not remove their clothing ?

1900

A. They were liked ; I never heard any complaints.

X-Q 152. How long after these sleeping cars were taken off before any other sleeping cars were run upon the Petersburg road ?

A. I don't know how long it was.

1901 X-Q 153. You have been in the employ of the road continuously, have you not, since these old cars were taken off up to the present time?

A. I have, sir.

X-Q 154. And yet you are unable to state how many years it was after these old cars were taken off before any other sleepers were run upon the road?

A. I am unable to tell the number of years; I know it was a good while, though.

X-Q 155. Since you ceased to act as porter on one of these old cars, what have your duties on the road been?

1902 A. I have been brakeman, and I have been fireman.

X-Q 156. You have then been connected with the trains running upon the road all the time?

A. Yes, sir.

X-Q 157. Had you been asked about these old cars before this stranger came to you to get your affidavit—say several years ago, before you had talked about them and seen two different models, what would you have said? Would you not have said that they had nearly passed from your mind?

1903 A. No, sir, I wouldn't; if anybody had asked me about them I should have told them.

X-Q 158. I understand you then to swear that you have, during all these years carried in your mind a distinct recollection of all the details entering into the construction of these cars which you last saw twenty-seven years ago?

A. I can't say that I can remember all the details about the cars; I can remember the principal part of them, because you put something to me about inches some time ago which I couldn't answer.

1904 X-Q 159. Were you subpoenaed to come here and give your testimony to-day, or did you come voluntarily at the request of Mr. Munson?

A. I was not subpoenaed; I came at the request of Mr. Munson.

RE-DIRECT EXAMINATION.

1905

R. D. Q. 160. You remember the old sleeping cars themselves perfectly at the present time ?

A. Yes, sir ; I do.

R. D. Q. 161. You were on the road some years before the sleeping cars ran, were you not ?

A. Yes, sir.

R. D. Q. 162. When you were first asked about these sleeping cars—how they were constructed and how their berths operated and worked—you remembered perfectly well and told what you knew, did you not ?

1906

A. Yes, sir.

R. D. Q. 163. I mean without being prompted or being told what anybody else thought or knew about it ?

A. Yes, sir.

R. D. Q. 164. When you gave your affidavit before Christmas, is it not true that the stranger you have spoken of took you to a notary public, and asked you questions, and that what you said was written down and you swore to it ?

A. Yes, sir ; and that took the hour I have spoken of.

his
RICHARD X GRAVES.
mark.

Witness : THOMSON H. PALMER,
Special Examiner.

1908

Adjourned to Friday, Oct. 7, 1881, at 10 o'clock A. M.

PETERSBURG, Va., Oct. 7, 1881.

1909

Met pursuant to adjournment. Counsel appearing as before.

MRS. ANN E. STILES, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows :

Q. 1. Please state your name, and residence, and your age ?

1910 A. Ann E. Stiles ; sixty-one last July ; residence, Petersburg.

Q. 2. Are you not the widow of Mr. Bellfield Stiles, who was formerly a conductor upon the Petersburg R. R., running from Petersburg, Va., to Weldon, N. C. ?

A. I am.

Q. 3. How long was your husband conductor upon this railroad ?

A. He was from the time I married him, in 1841, until about two years before the commencement of the late war.

1911 Q. 4. Did you ever know of a sleeping car being attached to and run with the train conducted by your husband during his life time upon the Petersburg R. R. ?

A. Yes, and there were at least two sleeping cars on the road.

Q. 5. Was it used for persons to sleep in while traveling over the road ?

A. Yes ; it was for that purpose.

Q. 6. Did you personally ever ride in that sleeping car and rest in any of its berths ?

A. A great number of times.

1912 Q. 7. About what year were these sleeping cars put upon the road ?

A. They were put on the road in '47 or '48 ; I won't say positively which year.

Q. 8. How long did they continue to use them on the road ?

A. Quite a number of years they were used.

Q. 9. Was there any ladies' apartment in these cars? 1913

A. Yes.

Q. 10. How was it formed?

A. By a partition across the car, cutting it off from the gentleman's apartment.

Q. 11. Was there a door in the partition?

A. Yes.

Q. 12. How many berths were there in the ladies apartment?

A. Nine; on one side of the aisle there were three berths and a little retiring room, and on the other side there were six berths.

1914

Q. 13. How many berths out in the gentleman's apartment or main part of the car?

A. About five or six long; I can't tell exactly.

Q. 14. How were these three berths on the same side of the ladies' apartment, with the retiring room, arranged?

A. There were three, one above the other, and they ran parallel with the sides of the car.

Q. 15. What made the lower berths?

A. That was the seat, and the middle berth was let down and formed the back of the seat, and the top berth was hinged to the side of the car, so that it could turn up, and fastened to the roof of the car. 1915

Q. 16. Was the seat back, or middle berth, hinged to the side of the car, so that it could turn up?

A. Yes, of course it was hinged.

Q. 17. These three berths in the ladies' apartment, next to the retiring room; how were the middle and upper berths fastened to sleep on?

A. There was iron bolts there that pushed back and forth into the partition at each end.

Q. 18. When this upper berth was raised up to the roof, did the same bolts fasten it up there? 1916

A. Yes.

Q. 19. Do you remember any of the berths in the car having rods and straps to support them?

A. Yes, they had straps and rods where the berths

1917 came together ; for instance, on the opposite side of the ladies' apartment, where the berths came together in the middle they had rods and straps, and at the ends where they came against the car and partition they had bolts to fasten them.

Q. 20. Did they have pillows and blankets in these berths ?

A. They had pillows , I don't remember about blankets.

Q. 21. Did you personally often occupy the top berth in the ladies' apartment, of the set between the retiring-room partition and the cross partition ?

1918 A. Yes, sir, several times ; it was the most desirable for a lady.

Q. 22. Why ?

A. In occupying the upper berth a lady was more private ; no one could look in at either end.

Q. 23. You have occupied other berths in the ladies' apartment at different times, I suppose ?

A. Yes.

Q. 24. Do you remember how you got into this upper berth ; if so, please state ?

1919 A. Well, very often I would go in, and my husband would fix it for my comfort ; and my husband would hold my foot in his hand, and assist me into the upper berth, as he would in mounting a horse.

Q. 25. How did other ladies reach the upper berth ?

A. By a stepladder.

Q. 26. Were these berths in these cars considered comfortable by passengers ?

1920 A. They were ; when the train left here at three o'clock in the afternoon, I occasionally took lady friends with me to make the trip to Welden and back, and we slept in the berths coming back ; the ladies were very willing to go, and considered the car very comfortable and luxurious.

Q. 27. Were these sleeping cars kept clean and neat ?

A. They were kept clean and comfortable.

Q. 28. Were these sleeping cars well patronized by the public ?

A. Yes, sir; they were.

Q. 29. When the upper berth was to be slept on; I understand you to say that it was unfastened in its turned up position against the roof, and let down and fixed horizontally to sleep on? 1921

A. Yes, sir; that is so; for I have stood by and seen my husband unfasten it and let it down for me to sleep on often.

Q. 30. Where did they put the pillows in the daytime?

A. They were put up in the upper berth, and the berth raised up, shutting them up behind it; my husband had a flat check box, which he used to put on the upper berth between the retiring room and the cross partition, and shut it in there behind it, and my husband would put things he found in the car—like a child's cloak, handkerchiefs, veils, etc.—in this upper berth, and shut it up to preserve them. 1922

Q. 31. Have you ever seen any model of these sleeping cars you have been testifying about?

A. I never have.

Q. 32. I now show you a model of part of one side of a sleeping car, marked here "Defts' Exhibit Petersburg Car," and ask you to examine the same and to say if you have ever seen a sleeping car constructed and operated like it and used upon the Petersburg R. R.? 1923

A. That is the very identical thing.

Q. 33. You have very carefully examined this model in all its details, have you not?

A. Yes, I have looked it over and examined it very carefully.

Q. 34. And you are positive that it is correct in its construction, and exactly like the old sleeping car?

A. Yes, sir; with the exception of the size.

Q. 35. Do you remember the mattresses on the upper berth to have been loose, as in the model? 1924

A. Yes, sir; they were loose in the sleeping cars themselves; there was a moulding or little piece of wood projecting up at the edge, so that the mattress went be-

hind it, and that was to prevent it from sliding off, I suppose.

1925 Q. 36. Do you remember whether or not in the said sleeping cars the rods that held the upper berths horizontally when slept in were buttoned against the face of each berth to hold it against the roof when not to be slept on, as in this model?

A. Yes, sir; I have seen my husband fasten them hundreds of times.

Q. 37. Do you remember that the upper berths, when raised up, went clear back against the roof of the car?

A. Yes, they went up against the ridges as far as they could go.

CROSS-EXAMINATION by Mr. Towle:

X-Q. 38. Have you ever signed any affidavit or paper containing a description of these old sleeping cars?

A. I never have.

X-Q. 39. Have you ever been asked by any person to do so?

A. No, sir.

1927 X-Q. 40. When were you first spoken to in reference to these old cars, and by whom?

A. Several months ago Mr. Lumsden called upon me and asked me if I remembered the old cars, and I told him I did, and I commenced to talk about them; I done nearly all the talking myself.

X-Q. 41. How long was this conversation with Mr. Lumsden?

A. About five or ten minutes.

X-Q. 42. Did he ask you whether you remembered that the upper berths shut up and let down?

1928 A. No, he didn't ask me that question.

X-Q. 43. Did he say anything to you in reference to the upper berths?

A. No, he didn't say a word to me about them—not a word.

X-Q. 44. After this conversation with Mr. Lumsden,

when did you next have any conversation with any one in reference to these old cars, and with whom?

1929

A. I never have had any with any one except that this gentleman here (Mr. Munson, defendants' counsel,) asked me if I remembered them, and I said I did remember all about them, and he asked me if I would testify, and I told him I had no objection.

X-Q. 45. Did Mr. Munson ask you anything in reference to the arrangement of the upper berths in these cars when he called to see you?

A. He asked me if I remembered how they were arranged, and I told him I did.

X-Q. 46. How long were these cars in use to the best of your recollection?

1930

A. Quite a number of years.

X-Q. 47. Are you positive that they were run more than two years?

A. Oh, yes, sir; they were run longer than that.

X-Q. 48. What kind of a track did the Petersburg and Weldon road have in 1847?

A. It was different from what it is now, but I can't tell exactly; there was some difference between the iron.

X-Q. 49. Was it rough or smooth?

A. The road was rougher than it is now.

1931

X-Q. 50. Mr. Lumsden never showed you any small model of these old cars, did he?

A. No, he never did, nor any one else.

The model is here covered from the sight of witness by complainants' counsel.

X-Q. 51. How were these cars lighted?

A. By oil lamps, and they sometimes smoked and were very disagreeable.

X-Q. 52. How many lamps were used in the gentlemen's apartment?

1932

A. I couldn't say positively whether there was two, three, four or one, but there was a light in that apartment.

- X-Q. 53. Can you state where either one of the lamps in the gentlemen's apartment was placed?
- 1933 A. Well there was one right over the door; there might have been others there; I don't remember.
- X-Q. 54. Do you remember any lamp in the gentlemen's apartment over the door passing through the partition into the ladies' apartment?
- A. I don't remember whether there was or not.
- X-Q. 55. How many lamps were used in the ladies' apartment?
- A. I don't know where the light was placed in the ladies' apartment, but I remember that there was an oil lamp there; it sometimes became offensive from the smoke.
- 1934 X-Q. 56. Are you positive that there was only one lamp in the ladies' apartment?
- A. No; I am not positive that there was only one; I don't remember; there was a light, I know.
- X-Q. 57. Was there a lamp in the ladies' retiring room?
- A. There was a light in there; I cannot say whether it was a lamp or not.
- X-Q. 58. How many windows did these cars have at each end?
- 1935 A. I don't remember any windows there at all.
- X-Q. 59. How were the windows placed on the side of the car?
- A. They had small posts between them; the posts were narrow and not wide, as they are now days.
- X-Q. 60. What shape were these windows? were they narrow, that is longer and higher than they were wide?
- A. I don't remember.
- X-Q. 61. How many windows did these cars have for each tier of berths?
- 1936 A. I suppose there were about three or four; I don't know precisely.
- X-Q. 62. Do you remember about these cars having any small windows on the side near the roof?
- A. I don't remember seeing anything of that sort; I don't think they were there.

X-Q. 63. How were these cars warmed during the winter season?

A. By a stove.

1937

X-Q. 64. Was there more than one stove in each car?

A. I think not; I think there was but one.

X-Q. 65. Please state where this stove was placed?

A. The stove was placed near the partition in the gentleman's apartment?

X-Q. 66. Are you positive that there was not a stove in the ladies' apartment also?

A. There was no stove in the ladies' apartment.

X-Q. 67. May not one of the lamps in the ladies' apartment have been placed over a window at that end of the car on the side of the door opposite from the ladies's retiring room?

1938

Objected to as assuming that there was a window in the end of the car which has not been shown to be so, and as deceptive and misleading.

A. I have already said that I do not know where the lamps were placed in the ladies' apartment.

X-Q. 68. Was there a carpet on the floor in the ladies' apartment?

1939

A. I don't remember, but I think not. I don't think there was any. I am not positive about that.

X-Q. 69. Did you ever see one of these cars with the upper berths stationary—that is, so that they could not be turned up?

A. No. I never saw them stationary.

X-Q. 70. Did you see these cars and ride in them when they were first put upon the road?

A. Yes. I reckon about the first trip that was made.

X-Q. 71. Did you ride upon one of these cars quite often when they were first run upon the road?

1940

A. Yes, I did, with my husband.

X-Q. 72. You never heard or knew that the upper berths in the first car constructed were made so that they could not be closed up during the day?

Objected to as calling for hearsay.

- 1941 A. No. I never knew or heard of them being made so that they couldn't be closed up.

NOTE.—By error of numbering, no intervening questions.

X-Q. 78. Are you clear in your memory that the middle and upper berths were hinged to the side of the car?

A. I am.

X-Q. 79. Did you ride on these cars in the Winter?

A. Yes.

X-Q 80. And you never saw any blankets used?

- 1942 A. I don't remember any blankets that belonged to the cars, but I have seen passengers use blankets; I don't know whether they belonged to the car or not.

X-Q 81. Are you positive that the upper berth in the single tier in the ladies' apartment was fastened by bolts passing into the adjoining partitions?

A. Yes, sir; the bolts shoved into the partitions.

X-Q 82. How far was it between the top of the car and the front edge of the upper berths, when they were turned up; how much space was there—could small baggage be put up there to be out of the way?

- 1943 A. There was about the space of the ribs that extended across; no packages or baggage could be put on them; you might get your fingers in there.

X-Q 83. Do you remember how far these ribs extended down from the top of the car?

A. Well, about so long (indicating on her finger, which measured proves to be two inches and a quarter).

X-Q 84. Why did they discontinue the use of these cars?

A. The change of schedule on the road made the use of sleeping cars unnecessary; they changed it from night to day.

- 1944 X-Q 85. Did you not hear persons say that they were dissatisfied with these cars?

A. I don't remember ever hearing a person say such a thing.

X-Q 86. What was on the lower and middle berths in these cars—mattresses or cushions?

A. Cushions.

X-Q. 87. Were they fastened so that they were tight ?

A. The lower one, I don't remember whether it was fast or loose ; I think it was fast, but the middle one I know was fast, and that the upper one was loose. 1945

X-Q. 88. How were the lower and middle berths held together ; was it by straps or rods ?

A. By leather straps ; they looked like leather.

X-Q. 89. Did you ever know of the use of iron rods or bands in the place of these leather straps ?

A. No, sir ; I don't remember iron bands or rods in place of the leather straps.

X-Q. 91. You have mentioned that you frequently had lady friends accompany you to Weldon and back, and that they enjoyed the trips very much—which do you think had the greatest weight in causing them to enjoy accompanying you ; the sleeping accommodations of the cars or your hospitality ? 1946

A. I think both.

X-Q. 92. Have you rode on sleeping cars that have been used on the Petersburg road since the war—I mean such sleeping cars as are now in use ?

A I have never travelled at night since the death of my husband, and have not ridden on any sleeping car at all since the war. 1947

X-Q. 93. Since Mr. Lumsden called to see you about two months ago, have you thought often about these old cars ?

A. No ; never thought anything more about them until I was asked again about them day before yesterday, but of course it has come into my mind.

X-Q. 94. Were you subpoenaed to come here as a witness, or did you come voluntarily at the request of Mr. Munson ?

A. I came voluntarily at his request ; I was not served with any summons to come. 1948

RE-DIRECT EXAMINATION.

1949 R-D. Q. 95. You have been without children during your married life I believe, so that you could travel as frequently as you pleased?

A. I have have had no children and could travel with my husband at any time.

R-D. Q. 96. Occupying the upper berth as you did in these sleeping cars, would you not have known and remembered if there had been a row of small windows above that berth and near the roof of the car?

A. I think I would have remembered it, but I don't remember of there being any there.

1950 R-D. Q. 97. Is it not true, Mrs. Stiles that when I called upon you to learn what you knew about these sleeping cars that I asked you to tell me all you knew in your own way and left you to do the talking?

A. That is so.

R-D. Q. 98. Was this so as to Mr. Lunsden?

A. He never said a word to me in his life about the cars, except to ask me if I remember them, and I told him about them.

Attest :

ANN E. STILES.

1951 THOMSON H. PALMER,
Special Examiner.

Adjourned to Tuesday, October 11th, 1881, at 10 o'clock A. M., at Chambersburg, Penn.

CHAMBERSBURG, Pa., Oct. 11, 1881.

Met pursuant to adjournment, counsel present as before.

Adjourned to October 12th, 1881, at 10 o'clock A. M.
1952

CHAMBERSBURG, Pa., Oct. 12, 1881.

Met pursuant to adjournment, present counsel as before.

Adjourned to October 13th, 1881, at 10 o'clock A. M.

CHAMBERSBURG, PENNA., }
October 13th, 1881. }

1953

Met pursuant to adjournment.

Counsel appearing as before.

JACOB HEYSER, a witness produced on behalf of the defendants, having been duly sworn, testified as follows :

Q. 1. What is your name, age, residence and occupation ?

A. Jacob Heyser ; age, 59½ years ; residence, Chambersburg, Penn. I am a manufacturer of straw boards —a paper manufacturer.

1954

Q. 2. How long have you resided in Chambersburg ?

A. All my life, except the period between the years 1833 and 1840, when I was at school.

Q. 3. Did you ever see a sleeping-car in use on the Cumberland Valley Railroad running between the borough of Chambersburg and the city of Harrisburg, Penn., prior to the year 1850 ?

A. I did.

Q. 4. Did you ever use that sleeping-car while it was running over the railroad ?

A. I did, more than once, on several occasions. I remember once in particular. It was May 5, 1846. I was married on that day. The train left Chambersburg near midnight, and my wife occupied a berth in the ladies' apartment of that car from Chambersburg, Pa., to Harrisburg, Pa.

1955

Q. 5. Please describe as near as you can the construction and arrangement of the sleeping-car used upon the Cumberland Valley Railroad and occupied by your wife and yourself, as you have stated.

A. The car was the same as an ordinary car on the outside. The rear end of the car, possibly about one-third the length of it, was divided from the other part of the car by a board partition with a door in the center opening into the other apartment. The seats were arranged parallel with the sides of the car except at the opposite

1956

1957 end from the ladies' apartment, where there were seats with reversible backs set at right angles with the sides of the car. The space between those seats and the ladies' apartment was occupied by berths for use by gentlemen, and especial preference was given to those berths to passengers on the western stage-coaches. The upper berths in that middle section, and I think in the ladies' apartment, but I am not positive, were fastened to the roof of the car by straps and lowered when to be occupied. In the ladies' department the front half of the seat was drawn up from below and stood on posts, I think, to increase the width of the seat for sleeping purposes. There were board divisions between the
1958 berths in the gentlemen's apartment. I did not occupy on the night named one of those berths, but occupied a set-up seat.

Q. 6. How many sets of berths were there on each side of the central aisle in the gentlemen's apartment?

A. My recollection is that there were three sets up and down. I am sure there were two sets of berths one above the other.

Q. 7. Do you mean by board divisions between the berths, board partitions?

1959 A. The berths were divided permanently from each other by board partitions. They went up to the roof and certainly went down as far as the seat or lower berth. They were wide enough to shut off one berth from another, and to exclude the view from one berth into another.

Q. 8. Am I right in understanding you to mean that there was a board partition at each end of each berth in the gentlemen's apartment operating as described in your last answer?

A. Yes, sir.

1960 Q. 9. You have explained the longitudinal seat as acting as a lower berth. What constituted the middle berth?

A. The back of the seat raised up on a level to be slept on. They were fastened there so as to be permanent when to be slept upon.

Q. 10. Please describe the upper berth?

A. The upper berth in the daytime was turned up at an angle toward the roof of the car and fastened there by straps, and was lowered down to a horizontal position to be slept upon, and fastened there so as to be so used. 1961

Q. 11. For how long a period of time was this sleeping-car used upon the Cumberland Valley R. R.?

A. I think that it must have been used on this road some six or more years.

Q. 12. Did you ride upon it and use its berths at any time?

A. I rode in it many times but never slept in its berths; as a general thing the western passengers arriving by stage-coach occupied the berths to the exclusion of Chambersburg and way passengers. 1962

Q. 13. Have you seen the berths in this car, run as stated by you, occupied by passengers?

A. I have, on several occasions.

Q. 14. How as to the upper berths?

A. I have seen the upper berths in day position and put down into night position ready to be slept on. I remember it on the night of May 5, 1846, and was sorry that I could not get a berth to sleep upon during that trip. 1963

Q. 15. Do you remember whether pillows were used in these berths?

A. I know that they were used in the ladies' apartment.

Q. 16. Do you remember clearly the board partitions placed vertically at each end of the berths so as to isolate one berth from another and between such partitions upper berths hung so that their front edges could be raised up towards the roof of the car, the berth then standing in an inclined position in which it was fastened when not to be slept upon or in the day use of the car; which berth could be unfastened and lowered to and supported in a horizontal position to be slept upon? 1964

1965 A. I do ; that is exactly what I have stated before, and I am positive in my recollection about it.

Q. 17. Please look at the model marked Defts' Exhibit Chambersburg car, now shown to you, and state whether you ever saw a sleeping-car constructed like it, and where ?

1966 A. I seen the sleeping-car to which I refer in my testimony, and the model now shown to me is a correct representation of that car, to the best of my recollection. I have not seen that car for many years, but within a few days, I came into this office on private business and observed this model, and at once said there is a model of old McCartney's sleeping-car, and I recognize it as a perfect model of that car ; except that I do not remember the cleats fastened to the partitions as a support for the upper berths. I remember the long straps attached to the berth when it was to be slept upon, but don't remember how they were fastened. I don't remember the shelf in the ladies' apartment, and I don't remember how the middle berth was fastened up.

CROSS-EXAMINATION BY MR. TOWLE.

1967 X-Q. 18. Were you subpoenaed as a witness, or did you come here voluntarily at the request of Mr. Munson ?

A. I came here at the request of Mr. Munson.

X-Q. 19. How many days ago was your attention first called to this old sleeping-car represented as you have stated by the exhibit model referred to ?

A. About five or six days ago my attention was called to it by seeing the model accidentally in this room.

1968 X-Q. 20. Have you given the matter of the construction of this car much thought since that time ?

A. I have thought considerably of it, but have not seen the model since that time until my attention was called to it in giving my testimony here at this time.

X-Q. 21. Have you had any conversation with the defendants' counsel in reference to the construction of

the car and as to your recollection in reference to the same?

A. I have; yesterday evening the defendants' counsel called on me and asked me what I remembered about it, and I told him. 1969

X-Q. 22. Did he ask you specifically as to any particular portion of the car?

A. Yes; he asked me whether I recollected such a car, and I told him I did, and I narrated to him the special incident I have named in my testimony that fixed my recollections of this car positively in my mind.

X-Q. 23. Did or did not Mr. Munson ask you if you remembered the partitions between and at the ends of the berths in the gentlemen's sleeping apartment, and further if you remembered the construction and operation of the upper berths in this portion of the car? 1970

A. Yes, sir; he asked me those questions after I gave him my recollections of the internal structure of the car, as to its berths and the partitions dividing the berths from each other and other particulars in the construction of the car, and the partition separating the ladies' apartment from the other portion of the car; and I told Mr. Munson before he asked me any particular questions my recollection of the construction of the berths, and that the upper berth swung up to the roof to get it out of the way and down to a horizontal position to be slept on. 1971

Q-X. 24. Is it not a fact that when you saw for the first time the model in this office and before you had given the matter of this old car consideration and thought that the particular construction, both in general and in detail, had been almost entirely forgotten by you?

A. No, sir; I think I could have given as accurate a description of the construction of that car as to its berths from memory without the use of this model, for the facts were well impressed on my mind on account of the particular occasion to which I referred in my testimony before. 1972

X-Q. 25. Have you any knowledge as to the use of

more than one of these cars upon the Cumberland Valley R. R. ?

1973

A. I have not, sir ; I have knowledge of this one.

X-Q. 26. How was this car about which you have testified heated ?

A. I think it was heated with a stove ; I am not positive about it.

X-Q. 27. State, if you remember, where the stove was placed in the car ?

A. I cannot state the exact position of the stove in the car. My impression is that there was a stove in the ladies' apartment and a stove in the front end. The time to which I refer was May, and it was in warm weather—pleasant.

1974

X-Q. 28. Do you remember of ever having seen a stove in the gentlemen's sleeping apartment ?

A. I do not.

X-Q. 29. How was this car lighted at night ?

A. I can't say whether it was by candles or lamps.

X-Q. 30. You do not remember, then, where the lights were placed ?

A. I do not positively ; my impression is that they were overhead.

X-Q. 31. Was there a water-closet in any portion of the car, and, if so, where ?

1975

A. I cannot recollect ; I don't remember of ever using one.

X-Q. 32. I understand you then to be unable to state whether there may not have been three tiers of berths on each side in the gentlemen's apartment ?

A. I recollect of at least two, and I think three tiers of berths on each side in the gentlemen's apartment.

X-Q. 33. As far as you can now remember, the middle berth forming the back of the seat in the gentlemen's apartment may, as I understand you, have been loose and not hinged to the side of the car ?

1976

A. Yes, sir.

X-Q. 34. And you do not remember how this middle berth, when raised up, was held in position ?

A. I do not remember the means of holding it there.

X-Q. 35. And you have the impression that the upper berths in the ladies' apartment were movable? 1977

A. The upper berth in the ladies' apartment? I don't recollect any upper berths in the ladies' apartment.

X-Q. 36. You remember, then, of no sleeping arrangement in the ladies' apartment above the lower broad seat or sofa?

A. I do not.

X-Q. 37. How wide, as near as you can now remember, were these berths in the gentlemen's apartment?

A. I should think they were in the neighborhood of two and a half or three feet. I never measured them. 1978

X-Q. 38. What, as near as you can tell, was the length of these berths in the gentlemen's apartment?

A. I cannot tell with any degree of assurance; I should think somewhere about six feet.

X-Q. 39. You do not know, then, how the upper berths in the gentlemen's apartment were secured while in use for sleeping purposes?

A. I do not know how they were secured.

X-Q. 40. You never occupied any berths in this sleeping-car yourself? 1979

A. I never did.

X-Q. 41. And you cannot swear positively that you ever saw one of the upper berths in this car in actual use for sleeping purposes?

A. I never saw it occupied that I call to mind at present.

X-Q. 42. Did you ever see any bedding or pillows stowed away above the upper berths or taken down from there for use?

A. I saw the conductor of the car fix those berths, but cannot now remember from what particular spot he got his bedding and pillows. 1980

X-Q. 43. I understand you to mean that you do not remember of seeing the spaces above the upper berths used for storing away during the day the bedding and pillows belonging to the car?

A. I don't remember.

1981 X-Q. 44. And you do not remember of the use of any pillows in the gentlemen's apartment?

A. I cannot call to recollection the use of them there though I have seen the berths furnished and occupied.

X-Q. 45. What recollection have you as to the number of windows used for lighting the car during the day. How many in the ladies' apartment and how many in the gentlemen's sleeping apartment?

A. I do not remember.

1982 X-Q. 46. Were these partitions between the berths in the gentlemen's apartment straight or scoloped on their front edge?

A. I cannot recollect any scoloped ones. My impressions are that they were straight.

X-Q. 47. As far as you can testify positively may not these partitions have only come down to the lower berth or seat and not have extended clear to the floor?

A. I am sure they came to the lower seat. They may have gone to the floor; I am not positive, as I never examined them below the seat.

X-Q. 48. How positive are you that these partitions extended to the roof of the car?

1983 A. I am as positive of that fact as anything of which I have recollection.

X-Q. 49. Were these cars kept clean—I have reference to the sleeping apartments of the car?

A. I have no special recollection as to the neatness or cleanliness of the car, especially in its modern acceptation of the term; it was a nice, tidy, and I thought comfortable place for my wife.

X-Q. 50. Can you swear with equal positiveness that the gentlemen's apartment was equally nice and tidy?

1984 A. I cannot say particularly about that as I did not examine it on that occasion.

X-Q. 51. Will you not be so kind as to state your best recollection of the condition as to neatness and cleanliness of this gentlemen's sleeping apartment?

A. My recollection of it is that it was as clean and

tidy as cars were in those days. I have no recollection of any filthiness or untidiness about it.

X-Q. 52. You have referred to the use of the gentlemen's sleeping apartment by stage passengers; is it not a fact that these shelves or bunks in that part of the car were simply designed and used for passengers worn out with stage travel to lie down upon and obtain a change of position or rest themselves from the effects of the cramped position in which they had been during a long stage-ride? 1985

A. It is not a fact that such was the intention of these berths, but on the contrary it was known to be the sleeping apartment for such passengers, and they availed themselves of it as such. 1986

X-Q. 53. Were not these bunks or shelves more of a place for tired stage-passengers to turn in and straighten themselves out than a place for actual sleeping purposes?

A. They were not; we considered them as sleeping berths; we considered them a luxury in those days.

X-Q. 54 I believe you have not testified as to there being any door in the partition separating the gentlemen's apartment from the cross-seat apartment; please state whether there was such a door? 1987

A. My recollection of it is that there was, although I am not positive about it.

X-Q. 55. Do you ever remember seeing this door there closed while the apartment was being occupied for sleeping purposes?

A. I can't recollect that I did.

X-Q. 56. Was smoking allowed during the night in the cross-seat portion of the car?

A. I have no recollection of any smoking there, and my impressions are against smoking being allowed there. The conductor of that car, Mr. McCartney, was a strict disciplinarian on that subject. 1988

X-Q. 57. Do you ever remember reading any written or printed instructions issued by the superintendent of the road, or of ever hearing the conductor request passengers occupying the cross-seats to keep quiet at night

so as not to disturb those sleeping in the adjoining apartments?

1989 A. I do not; on the night to which I refer there was a great deal of anxiety in the car on account of an accident. We ran into a drove of cows and killed two.

X-Q. 58. How often, to the best of your recollection, did you ride in the cross-seat apartment at night while the adjoining apartment was being occupied for sleeping purposes?

A. I can't say how often; several times.

1990 X-Q. 59. Do you remember whether any effort was made by the conductor or other employes of the train to keep that portion of the car quiet at night?

Objected to as incompetent, irrelevant and immaterial.

A. I do not.

X-Q. 60. Did you ever know of all of the berths in the gentlemen's apartment being occupied at one time?

A. On the night to which I refer, as I stated before, I was unable to secure a berth, as I was informed that they were all taken.

1991 X-Q. 61. Are you willing to swear positively that these berths in the gentlemen's apartment were in fact considered desirable for any other purpose than to lie down upon, the same as a person would stretch themselves upon a lounge or a sofa for a change of position after having occupied an upright position?

A. I am; they were considered desirable as sleeping places.

X-Q. 62. Did you ever hear any one complain about the loss of sleeping accommodations upon the Cumberland Valley Road after these cars were out of use?

1992 A. I can't call to mind that I did.

X-Q. 63. For how many years, to the best of your recollection, was it after these cars went out of use before other sleeping cars were used upon this road?

A. I have no recollection of any sleeping-cars on this

road from the time these sleeping-cars were taken off until this summer.

1993

RE-DIRECT EXAMINATION BY MR. MUNSON.

R.-D. Q. 64. Is it not true that you came here to testify at my request and as a courtesy to me, without the hope of fee or reward, and would you not do so upon the request of any gentleman where you had a knowledge of facts it was desirable to prove for court purposes?

A. Yes, sir ; that is true.

R.-D. Q. 65. I understand you to state positively that you recollect in the old sleeping-car you have testified about that the upper berths were so arranged between partitions that their front edges could swing up to the roof and fasten there by short straps, which berths could be swung down to a horizontal position and be supported there to sleep on?

1994

A. Yes, sir.

R.-D. Q. 66. And that while you do not remember how they were supported in this horizontal position, you do remember long straps coming from the roof down to and fastened to the front edge of the berth, but do not remember what that means of fastening was?

1995

A. Yes, sir ; that is correct.

R.-D. Q. 67. And I understand you to state that the middle berth went against the side of the car to form the back of the seat, and that this seat back could be raised to a horizontal position to be slept on, but do not know how it was attached to the side of the car or how it was fastened in that raised position?

A. I remember that state of facts to be so, but can't say whether the back was attached to the side of the car to raise up or whether it was taken bodily out and put in a horizontal position, but it formed the back of the seat, and also, when horizontal, the middle berth.

1996

R.-D. Q. 68. I understand you that these berths were all cushioned ; is that so?

A. Yes, sir.

R.-D. Q. 69. If this sleeping-car had been unclean or untidy, would you not have observed that and remembered it?

A. I think I would.

JACOB HEYSER.

Attest :

THOMSON H. PALMER.

Special Examiner.

Adjourned to October 14, 1881, at 10 o'clock A. M.

1998

CHAMBERSBURG, PENN.,
October 14th, 1881. }

Met pursuant to adjournment.

Counsel appearing as before.

GEORGE W. NITTERHOUSE, a witness produced by and on behalf of the defendants, being duly sworn, testified as follows :

1999 Q. 1. State your name, age, residence and occupation?

A. George W. Nitterhouse ; age, 63 ; residence, Chambersburg, and I am master car-builder of the Cumberland Valley R. R.

Q. 2. How long have you been employed by said railroad?

A. From 1850, for a little over two years, and in 1854 I worked for them for a short time, and since 1860 I have been constantly employed by that company as master car-builder.

2000 Q. 3. What was the first work you ever did for the Cumberland Valley R. R. ?

A. Repairing a car used as a sleeping car on the road. It was in the year 1841.

Q. 4. What repairs did you make upon this sleeping-car?

A. We put in new sash and fixed up the seats and berths.

Q. 5. Was this car then in use upon the railroad for sleeping purposes? 2001

A. Yes, sir.

Q. 6. Will you please describe the construction of that sleeping-car—I mean as to the inside arrangement of its berths and seats?

A. One end of the car was intended for a ladies' apartment, which was cut off by a partition extending across the car with a door in it. There was two seats in that department, one was what you might call a sofa seat on one side of the car, which was shorter than the opposite seat by reason of a water-closet being there. 2002
The seat on the other side was intended to be slept on, and was as long as the ladies' department, and its front turned up so as to make it wide to sleep on. There was bolts on each end of the turn-up front to fasten it into its place, one bolt went into the end of the car and the other bolt went into the cross-partition. There was a shelf over that long seat to lay packages on. In the other part of the car there was two lengths of berths on each side of the car. There was three berths in each division, making 12 berths in all. The berths were supported by bolts on the ends that went into partitions at the ends of the berths. There were cross-seats from the ends of the berths to the end of the car on each side of the aisle. 2003

Q. 7. What made the lower berths?

A. The seats made the lower berths.

Q. 8. What made the middle berth?

A. The back of the lower seat.

Q. 9. Please describe how the back of the seat made the middle berth?

A. It was hung upon hinges along the window-sill and hung down against the side of the car to form the back of the seat. By raising it up and securing it by the bolts to the partitions it made the middle berth. 2004

Q. 10. Was there any top berth?

A. Yes, sir; there was a berth above. It was hung

2005 from hinges that went into the partitions at each back end. It was suspended at each end by a sickle-shaped hinge, and when it was in use for sleeping purposes it was let down and secured to the partitions by bolts at each end the same as the middle berths. Two straps were used to give it additional security. When not in use for sleeping purposes it was raised up to the roof and held in that position by shorter straps.

Q. 11. Do you mean that there was a partition at each end of these berths?

A. Yes, sir; a partition at each end.

2006 Q. 12. How far down and how far up, and how far into the car did these partitions extend?

A. They extended from the floor to the roof, and extended about 20 inches into the car.

Q. 13. Do you mean that they stood fixed at each end of the berths so as to cut one berth completely off from another?

Objected to as leading.

A. Yes, sir.

2007 Q. 14. Could a person lying in one berth look forward or rearward into the next berth?

A. No, sir.

Q. 15. What prevented it?

A. The partition.

Q. 16. Were these partitions stationary or movable?

A. They were stationary.

Q. 17. These sickle-shaped hinges which you say went into the partitions—what kind of a socket did they turn in?

A. There was a plate sunk into the partition flush with its face with a proper sized hole in it.

2008 Q. 18. These two long straps which you describe as used to give additional security to the upper berth when horizontal to be slept upon, where did they come from and where did they go to?

A. They came from the roof down to the front edge

of the berth and were fastened there by a catch or hook.

Q. 19. And the short straps that held the berth up in its inclined position, do you remember how they were fastened to the berth? 2009

A. The two short straps that held the berth up to the roof were fastened to the berth by buttons.

Q. 20. I understand you to describe these upper berths as being hinged at their rear edge to the partitions at each end, and so as to swing up between those partitions; is that correct?

A. Yes, sir.

Q. 21. When thus swung up was there a triangular space behind them bounded by the sides and roof of the car, the partition at each end and the berth in front? 2010

A. Yes, sir; there was.

Q. 22. Was anything ever put in this space behind the upper berth when raised up?

A. Yes, sir; it was used for storing away the pillows.

(No Q. 23.)

Q. 24. How many pillows for each berth?

A. One pillow for each berth. 2011

Q. 25. Do you remember any coverings as a blanket or comforter being used for the berths?

A. Yes, sir; a comforter.

(No Q. 26.)

Q. 27. Where were those put away?

A. They were put in the upper berth.

Q. 28. Were there any cushions or mattresses in these berths?

A. Yes, sir.

Q. 29. Were the seat cushions fast or loose?

A. Loose; the others were fast. 2012

Q. 30. Was there anything fancy about the edge of the partitions between these sets of berths?

A. The front edge of the partitions between the berths were scrolled—fancy.

Q. 31. Is this sleeping-car that you have described

the only one that you ever saw on the Cumberland Valley R. R. ?

2013

A. No, sir ; there was another car built similar to that, with a little difference in the partitions, and put on the road. The fronts of its partitions were plain or straight.

Q. 32. About how long after you repaired the first car was this second one built and put on the road ?

A. That I could not answer.

Q. 33. Was it as much as three years, as near as you can recall ?

A. I don't suppose it was that long, but I can't say as to the exact time.

2014

Q. 34. Do you know who constructed the berth arrangements in this second car ?

A. Yes, sir ; it was constructed by Jacob Shaffer ; I saw it while the berths were being put in it, several times.

Q. 35. Did you see both of these cars at various times in use upon the Cumberland Valley R. R. for sleeping purposes ?

A. Yes, sir.

Q. 36. Did you ever ride in these sleeping-cars and occupy a berth therein on the road ?

2015

A. Yes, sir ; several times.

Q. 37. Where were you during the years 1850 and '51 ?

A. I was engaged principally at Bridgeport and along the line of the road.

Q. 38. Is it not a fact that you frequently saw either one or the other of these sleeping-cars at Bridgeport, where they arrived each morning ?

A. Yes, sir ; whenever I wasn't out on the road.

Q. 39. Were these sleeping-cars in use for sleeping purposes at that time ?

2016

A. Yes, sir ; in 1850. I am unable to say whether the cars had stopped running before I left in the fall of 1851.

Q. 40. Have you not frequently seen the berths in

these sleeping-cars occupied by passengers to rest in while running over the road?

A. Yes, sir.

207

Q. 41. Whether or not you have seen the upper berths in them occupied by passengers?

A. I have no recollection of seeing the upper ones occupied by passengers, but I have seen the other two.

Q. 42. Were the berths in these cars considered to be comfortable?

A. Yes, sir.

Q. 43. Were the cars kept clean and neat and tidy?

A. They were kept in good condition.

Q. 44. Please look at the model now shown to you, marked Def'ts' Exhibit Chambersburg Car, and state whether or not it is a correct model of the construction and operation of either of the sleeping-cars you have testified about as being in use upon the Cumberland Valley R. R.?

2018

A. It is a correct model of the second car that I have testified about. The first car did not have the legs on the front flap of the long seat in the ladies' apartment, but had the bolts at each end. Here is a difference. There were no cleats in the first car; the upper berths were merely held by the bolts and straps that I have described.

2019

Q. 45. I now call your attention to the fact that in this model the front edge of the upper berth, although it will swing up to strike the roof, stands, when fastened by the short straps, a slight distance from the roof; was that so in the sleeping-cars themselves?

A. Yes, sir.

Q. 46. About what distance did it thus stand off from the roof?

A. It stood off about five inches.

Q. 47. Do you remember the cleats to support the upper berth when down, attached to the partitions at the ends of the berths in the second car?

2020

A. I do, in the second car.

Q. 48. And the legs for the front flap in the ladies' apartment?

A. Yes, sir ; I do remember them.

2021 Q. 49. Please look at the window-sash marked Chambersburg Car Sash now shown to you, and say whether you ever saw a window-sash like that before, and where ?

A. Yes, sir ; I saw them when I made them. That is one of the sash I made and put into the sleeping-car in 1841, as I testified.

Q. 50. Did the old windows that you took out of the first car have the brass-lifter and sash-lock shown upon this exhibit ?

A. No, sir ; they lifted by a strap.

2022 Q. 51. Did these window-sash that you put in operate any differently from the old sash that you took out ?

A. The old sash lifted up and pushed out and rested on the sill like an old omnibus. The ones that I put in lifted straight up and down and were secured by the sash-lock on the frame.

Q. 52. I notice the bottom pannel of this sash is wood. Do you know why this was made so ?

A. It was made in that way to prevent the glass from being broken out along the berths.

Q. 53. Broken out along the berths in what way ?

2023 A. By persons sleeping in the middle berths when the windows were raised up, striking them with their feet.

Q. 54. Did you ever see a bolt like the exhibit Chambersburg Car Berth Bolt, and where ?

A. Yes, sir ; that is the kind of bolt that was used upon the sleeping-cars that I have testified about.

Q. 55. Do I understand you to mean by your description that these sleeping-cars had a central passage-way through them, and that the seats and berths were on each side of that passage way, the berths being arranged longitudinally or parallel with the sides of the car ?

2024 A. Yes, sir ; that is correct.

Q. 56. The repairs that you did to the first car I understand to have been simply such as were necessary to restore its worn parts ; is that so ?

A. Yes, sir ; that is all.

CROSS-EXAMINATION BY MR. TOWLE.

X-Q. 57. How long ago was your attention first
called to the sleeping-cars about which you have just
testified?

A. It was about a month ago.

X-Q. 58. Who was it that called to see you or con-
versed with you in reference to these old cars about
a month ago?

A. Mr. Shaffer was the person who spoke to me
about it.

X-Q. 59. State as near as you can what Mr. Shaffer
said when he called to see you?

A. He said he was going to make a model of the old
sleeping-car.

X-Q. 60. Did he ask you if you remembered about
the upper berths being so constructed that they could
be raised up and lowered down, and about the partitions
between the tiers of berths in these old cars?

A. We didn't have much conversation about it.

X-Q. 61. Please state whether or not he asked you if
you remembered about the upper berths and the par-
titions?

A. He asked me if I remembered about them.

X-Q. 62. Were you subpoenaed to come here to-day,
or did you come voluntarily at the request of the coun-
sel for the defendants?

A. I came at Mr. Munson's request; I was not sub-
poenaed

X-Q. 63. Have you ever given any testimony or made
any affidavit in relation to these old cars prior to your
examination this day?

A. Yes, sir; sometime last fall I made an affidavit.
I didn't know that you referred to that when you asked
the question before.

X-Q. 64. In what suit was this affidavit made?

A. I understood that it was in the suit between Mr.
Pullman and the Baltimore & Ohio R. R.

X-Q. 65. At whose request did you make that affi-
davit?

A. At the request of Mr. Munson, counsel now present.

2029 X-Q. 66. Did you have any extended conversation with Mr. Munson or any one else about the construction of these old cars at the time you made this affidavit, and if so, with who?

A. I had a conversation with Mr. Shaffer and Mr. Daniel Hull and Mr. Munson.

X-Q. 67. Did you see any model of these old cars or one of them at the time you gave this affidavit?

A. Yes, sir.

X-Q. 68. You examined it, I suppose?

2030 A. Yes, sir.

X-Q. 69. At the time you were called upon for this affidavit and previous to your conversation with Mr. Shaffer, Mr. Hull and Mr. Munson, and before you had seen the model that they asked you to examine, had not these old cars nearly if not quite passed from your memory, that is as as to the details of their construction?

A. No, sir; we got to talking about it and brought up things to our recollection.

2031 X-Q. 70. Your memory, then, was quite dim until you had talked the matter over with these gentlemen, was it not?

A. After talking the matter over my ideas brightened up about it.

X-Q. 71. Have you given the matter of the construction of these old cars much thought since you gave this affidavit and examined the model about a year ago?

A. Yes sir.

2032 X-Q. 72. Have you had any recent conversation with any one in reference to these same cars, and if so state when and with whom?

A. The most of the conversation I have had was with Mr. Shaffer, in regard to the car.

X-Q. 73. Have you conversed frequently with Mr. Shaffer about these cars?

A. I have conversed with him at different times.

X-Q. 74. You have then, as the result of your repeated conversations with Mr. Shaffer and Mr. Hull and compared notes with these gentlemen as to the details of construction, so refreshed your memory in relation thereto as to be able to testify to-day as to the model offered in evidence by the defendants; is it not so? 2033

A. I have never compared any notes with any one. I am testifying from my own knowledge of it.

X-Q. 75. Do you pretend to swear that your memory has not been refreshed by your conversations with Mr. Shaffer and Mr. Hull?

A. No, sir. It has been refreshed.

X-Q. 76. When did you first see the model which you have stated on your direct examination to correctly represent the second car? 2034

A. I have seen it during the time of its construction and after it was completed.

X-Q. 77. Did you have charge of its construction?

A. No sir. I have charge of the Cumberland Valley R. R. shops where it was constructed. Mr. Shaffer constructed the model.

X-Q. 78. Did Mr. Shaffer consult with you in reference to the model while it was being constructed?

A. We had no conversations about the construction of the model. 2035

X-Q. 79. Do you know who constructed the model that you saw a year ago, at the time you gave the affidavit; If so, state who made it?

A. I do not.

X-Q. 80. Did Mr. Shaffer ever have any conversation with you in reference to making a model of one of these old cars previous to the making of this model now before you?

A. I have no recollection of it.

X-Q. 81. Are you not under the impression that Mr. Shaffer made the model you saw about a year ago? 2036

Objected to as incompetent, irrelevant and immaterial.

A. I could not say as to that.

2037 X-Q. 82. Is that all the answer you have to make to the question?

A. Yes, sir.

X-Q. 83. Have you been asked within a few days by Mr. Shaffer or Mr. Munson as to whether you clearly recollected the construction of the upper berths and the adjoining partitions?

A. I have not seen Mr. Shaffer to have any conversation with him for some time—He is sick. I told Mr. Munson about the construction of them.

2038 X-Q. 84. Did not Mr. Munson particularly ask you about these parts of the car?

A. I told Mr. Munson about the way they were constructed.

X-Q. 85. Do you consider yourself familiar with the construction and dimensions of Rail Road cars, that is, passenger cars?

A. Yes, sir.

X-Q. 86. What was the length of these old sleeping cars?

A. They were about 34 feet long.

X-Q. 87. How wide were they?

2039 A. About 8 feet.

X-Q. 88. How high in the center?

A. About six feet eight to ten inches.

X-Q. 89. What was the width of the lower berths?

A. About twenty inches.

X-Q. 90. What was the width of the middle and upper berths?

A. They were about the same as the other.

X-Q. 91. How were these cars heated?

A. By a stove.

2040 X-Q. 92. Was there more than one stove to each car?

A. There was but one stove to each car, to my best recollection.

X-Q. 93. Please state where in the car it was placed?

A. It was placed about the center, at the middle partition, between the two sets of berths.

X-Q. 94. Do you mean about the center of the gentlemen's sleeping apartment? 2041

A. Yes, sir.

X-Q. 95. How were these cars lighted?

A. There was a light in the ladies' apartment, and a light in the gentlemen's apartment.

X-A. 96. What kind of lights were used, and where were they placed?

A. One was placed upon the partition, and the other at the end of the car; they used at that time lamps, but I don't recollect exactly what kind.

X-Q. 97. May they not have used candles? 2042

A. It is more than likely they did at one time.

X-Q. 98. Can you swear positively from your own recollection that oil lamps were used in these cars at any time?

A. No, sir, I could not say.

X-Q. 99. You do not remember then whether lamps or candles were used?

A. I don't recollect which was used.

X-Q. 100. Was there any door that separated the portion of the car that had the cross seats, from the gentlemen's sleeping apartment? 2043

A. No, sir, there was no door there.

X-Q. 101. Do you wish to be understood as testifying that in the first car, the front part of the wide sofa in the ladies' apartment, when raised up was held in position by end bolts?

A. Yes sir,

X-Q. 102. And that the shelf above this wide sofa, in the same apartment, was only used for packages and bundles?

A. Yes, sir; and the pillows of that apartment were also put up there. 2044

X-Q. 103. How often were you in these cars, when the berths were prepared for use for sleeping purposes?

A. I have been in them several times.

2045 X-Q. 104. Was your connection with the road such, that it was part of your duty to go inside of these cars, or to look after them in any way?

A. No, sir, only when passing down the road as a passenger and when I repaired them.

X-Q. 105. How long were you in making repairs on the first car about which you have testified?

A. I don't recollect the time exactly, it was over two weeks.

X-Q. 106. How frequently did you ride in one of these cars?

A. I have rode in them several times.

2046 X-Q. 107. About how many times a year?

A. I could not say just exactly how often, several times a year.

X-Q. 108. Your knowledge then of these cars at the time they were in use, was such as you acquired in the space of about two weeks while repairing the first one, and from riding in them a few times a year?

A. Yes, sir.

2047 X-Q. 109. Do I understand you correctly when you state that you never occupied one of the upper berths in the gentlemen's apartment yourself, and do not remember seeing one of them occupied?

A. I don't remember seeing any one occupy one of the upper berths, or occupying one myself.

X-Q. 110. Did not more passengers sit up in the cross seats at night, than occupied berths in the adjoining parts of the car?

A. I could not say as to that. The western travellers had the preference, and the berths were generally occupied by those people.

X-Q. 111. Do you mean by western travellers, passengers arriving by stage?

2048 A. Yes, sir.

X-Q. 112. Is it not a fact that these cars were especially intended for the accommodation of stage passengers?

A. The berths were intended especially for travellers, for the accommodation particularly of those who came

here from the west by stage; at that time there were a great many passengers came by stage.

X-Q. 113. The berths then in the gentlemen's apartment were simply designed and used for the accommodation of passengers worn out with stage travel, admitting of their lying down and obtaining a change of position, from that which they had occupied while riding in stages? 2049

A. They were intended for the accommodation of western travellers or any persons as needed, or wanted sleeping accommodation. Persons from Chambersburg going down that time of night would take the sleeping car.

X-Q. 114. You have stated that there was a stove in the gentlemen's sleeping apartment and that there was no door between that and the portion of the car having the cross seats, was any effort made to your knowledge to have the latter part of the car quiet, so that passengers desiring to sleep could do so? 2050

A. The conductors would always keep the passengers quiet, they would make an effort to do so.

X-Q. 115. With the stove in the sleeping apartment and with the opening out into the cross seat portion of the car, could passengers sleep much in these berths of the gentlemen's apartment? 2051

A. I went to sleep there myself. I can't answer for anybody else.

X-Q. 116. Was smoking to your knowledge allowed at night in the cross seat portion of the cars?

A. No, sir.

X-Q. 117. Have you any knowledge or recollection about it one way or the other?

A. I know the conductors at that time, Mr. McCartney and Mr. Rittner, were particular not to allow anything of the kind. 2052

X-Q. 118. State, if you know, why these sleeping cars were taken off from the road?

A. I suppose they were taken off because the Pennsylvania Road was opened through to Pittsburgh, and

the travel went by that road instead of coming through Chambersburg.

2053 X-Q. 119. Did you ever hear anybody complain about the loss of sleeping car accommodations upon the Cumberland Valley Road after these cars were taken off?

A. I have no recollection of hearing any person complain about them.

X-Q. 120. Is not the Cumberland Valley R. R. Co. abundantly able to construct sleeping cars if there was a demand for them, and have they not been since these cars went out of use?

2054 Objected to as incompetent, irrelevant and immaterial.

A. That is a question I couldn't answer; it is for the directors of the road to say.

X-Q. 121. Has not the road been in good financial condition ever since these cars went out of use, or for the last 20 years?

Same objection.

2055 A. From reading the annual report I judge they have been in good circumstances.

X-Q. 122. How long after these old cars were taken off was it before any other sleeping cars were used upon the Cumberland Valley R. R.?

A. They have never had any on the road until this last summer, and there are no sleeping cars running here now that I know of unless they have one on that night train which I don't see. I have been told that they have been taken off.

2056 RE-DIRECT EXAMINATION BY MR. MUNSON.

R.-D. Q. 123. Do you remember that in 1868, you heard that testimony was being taken here with reference to these old sleeping cars?

A. Yes, sir; I recollect it.

R.-D. Q. 124. Did not this fact cause you to think about them, and did you not then recall to your mind just how they were constructed and operated? 2057

A. I did at that time.

R.-D. Q. 125. And were you particular not to have any conversation then with any one about them lest you should be called as a witness and thereby put to trouble and inconvenience?

A. Yes, sir; I had no conversation with any one at that time. I studied the matter over in my mind at that time, and I said nothing to any person about it, because I did not want to be called as a witness.

R.-D. Q. 126. Did you at that time clearly and distinctly recall to mind how those sleeping-cars were constructed and operated? 2058

A. I did.

R.-D. Q. 127. And from that time when Shaffer and others gave their testimony about these cars down to the time Mr. Munson called upon you and took your affidavit, had you talked with anybody about their construction?

A. I have no recollection of talking with anybody in regard to them.

R.-D. Q. 128. Did not Mr. Munson at the time he took your affidavit simply ask you to describe the cars to him without giving you any suggestions as to how they were made? 2059

A. He did.

R.-D. Q. 129. And did you not fully and completely describe them without any aid and before you saw the model?

A. I described how they were made before I saw the model.

R.-D. Q. 130. And afterwards, when you were shown the model, you pronounced it to be a correct one, and so swore in your affidavit, did you not? 2060

A. I did.

R.-D. Q. 131. Jacob Shaffer works in the shop you have charge of, so that you meet him frequently each day; is that not so?

A. Yes, sir ; that is so.

2061 R-D. Q. 132. Before you saw Mr. Shaffer and Mr. Hull with Mr. Munson at the notary's office, when you gave your affidavit, had you not detailed to Mr. Munson your recollection of the construction and operation of these old sleeping-cars ?

A. I had, before I went to Mr. Grier's office.

R-D. Q. 133. You also have seen Mr. Daniel Hull frequently—most every day—in the shop, have you not ?

A. Yes, sir.

2062 R-D. Q. 134. Is it not the fact that the conversations with Shaffer and Hull about the cars have been mere allusions to the old cars from time to time and not extended conversations about their particular construction ?

Question objected to as leading and as being an evident attempt on the part of defendants' counsel to obtain from the witness an answer plainly suggested by the question.

A. Yes, sir.

2063 R-D. Q. 135. I understand you to mean that there has been no serious or lengthy conversations with them about the details of the construction of the cars, but only casual remarks about them such as would naturally occur between men frequently meeting who were equally familiar with the old cars, is that not so ?

Objected to as being an evident attempt to have the witness contradict his testimony already given, the conversations referred to having been fully sworn to on cross-examination.

2064

A. That is so.

R-D. Q. 136. In giving your testimony to-day, has it been from your memory of the old cars themselves ?

A. Yes, sir.

R-D. Q. 137. And you at this moment remember the construction and operation of the old cars themselves, just as you have testified about them? 2065

A. I do.

R-D. Q. 138. Do you perfectly remember in the old cars themselves the fixed partitions at the ends of the tiers of berths and the upper berths swinging up and down between them as you have testified?

A. I do.

R-D. Q. 139. And have you always remembered these facts whenever you have thought of the cars or they have been spoken of?

Objected to as not being proper re-direct examination, the witness not having been asked by the complainants' counsel in reference to the upper berths or partitions. 2066

A. I have.

R-D. Q. 140. Has any one ever suggested any construction of those cars which you have not remembered yourself when it was spoke of?

A. No, sir.

R-D. Q. 141. I suppose these conversations you allude to with Shaffer and Hull have been mere remarks about some parts of the cars which you recognized as being correct and which confirmed your memory, and that is what you have referred to as refreshing your recollection; is that so? 2067

Objected to as suggesting a desired answer and as being a gross attempt on the part of defendants' counsel to have the witness contradict the testimony given on cross-examination in reference to the conversations referred to in the questions. 2068

A. That is so; yes, sir.

2069 R-D. Q. 142. When Mr. Munson conversed with you about these old cars, did he not seek to learn what you knew by asking you to tell him what you remembered, and left it to you to tell?

Same objection.

A. Yes, sir; he did.

R-D. Q. 143. Do you mean to be understood that you have ever had a meeting with Shaffer and Hull and Munson to compare notes with them and get up an agreement as to how these cars were constructed?

2070

Question objected to as a gross attempt on the part of defendants' counsel to get the witness to contradict his testimony given on cross-examination.

A. No, sir; there has never been anything of that kind. If you understood me to say so to-day it was a mistake.

R-D. Q. 144. Have you any interest of any kind present or prospective to be in any manner affected by your 2071 testimony or the giving of it in this case?

A. None whatever.

RE-CROSS-EXAMINATION.

R-X-Q. 145. You have sworn upon your cross-examination as to conversations which you had with Mr. Shaffer, Mr. Daniel Hull and with Mr. Munson, and testified that you got to talking about these old cars with these gentlemen, and that these conversations "brought up things to your recollection," and 2072 that after talking the matter over your "ideas" about the old car "brightened up." Also that you had given the matter of the construction of these old cars much thought, and had conversed with Mr. Shaffer at different times about them. Do you now wish to be understood as contradicting the testimony above referred to,

and as swearing that your recollections of these old cars were not greatly refreshed and strengthened by these conversations and by the examination of the model referred to by you? 2073

Objected to as incompetent, irrelevant, and immaterial, and as deceptive and misleading, and further because it assumes that the witness has contradicted his testimony, which is not the fact, although he has stated that his conversations with Shaffer and Hull, which were casual and meagre, and brought about by frequent and almost daily contact with them in the shop in which remarks were made about parts of the cars which he recognized to be true statements that agreed with his memory, and that such suggestions did to that extent refresh his recollection. 2074

Complainants' counsel excepts to the foregoing objection as being a clearly designed attempt on the part of defendants' counsel to obtain from the witness a desired answer suggested by the question, and as being intended to lead the witness to contradict the testimony given on cross-examination. 2075

A. We had no extended conversations in regard to it—merely speaking about the matter—and of course when we spoke about it it would bring it to my mind. It is natural that men together in a shop will speak about a matter of that kind.

R-X.Q. 146. You still swear then, do you, that your recollection of these old cars has been greatly refreshed by the examination of the model about a year ago, and by the conversations at different times referred to by you with the parties mentioned? 2076

2077 Objected to as an outrageous misstatement of what the witness has sworn to, first in assuming that the witness has said that the model refreshed his recollection, when on the contrary he has sworn that he described these old sleeping-cars to Mr. Munson before he (the witness) saw the model.

2078 A. I gave a description of that car before I had seen a model. In regard to the conversation, of course it referred to a general conversation, and speaking about some part of the car brought to recollection all about it, and I was satisfied that I had given a correct description of the car in my affidavit.

 R-X-Q. 147. In your last answer you have referred to "a conversation," do you mean to swear that you did not have several conversations at different times with Mr. Shaffer, Mr. Hull and Mr. Munson in reference to the construction of these old cars?

 A. That is not so.

2079 R-X-Q. 148. You swear then, do you, that you have not conversed with Mr. Shaffer several times about these old cars?

 A. Not more than occasional remarks in the shop.

 R-X-Q. 149. And do you swear that you have never conversed with Mr. Hull in reference to these cars?

 A. I never had any extended conversation with him in regard to them.

 R-X-Q. 150. Did you not talk with him as to how the car was constructed?

 A. I have no recollection of ever having any conversation about the construction of the car with Mr. Hull.

2080 R-X-Q. 151. Be so good as to explain what could have been said between you and Mr. Hull about these cars, if it didn't have reference to their construction?

 A. I recollect one time Mr. Hull asked me if I recollected about the old cars, and I told him I did. There was nothing said about the construction of them at the time.

R-X-Q. 152. Is it not a fact, Mr. Nitterhouse, that in your conversations with Mr. Shaffer you referred to or talked about the construction of the upper berths in the gentlemen's apartment and of the partitions between and at the ends of these berths? 2081

A. No, sir.

R-X-Q. 153. You now swear, do you, that you never had any conversation or conversations with Mr. Shaffer in reference to the upper berths and the partitions of the part of the car last referred to?

A. The only conversation was when I gave a description of the car, and that was after I gave my affidavit. He did ask me a question about the upper berths going up and down between the partitions, after I had given my affidavit. 2082

R-X-Q. 154. Will you swear positively that that was the only occasion when, in your several conversations with Mr. Shaffer, the upper berths and the partitions adjoining were referred to?

A. To the best of my knowledge it was.

R-X-Q. 155. State what parts of the car you have talked about with Mr. Shaffer at your several conversations, if no reference has ever been made to the upper berths or partitions except on that single occasion? 2083

Objection is made to the continued misuse of the expression "several conversations" when the same has been explained by the witness to have been occasional remarks about the car while this model was being built in the shops of which the witness is the chief, caused by almost constant contact of the witness with Shaffer, as deceptive and misleading and an attempt to deceive the witness into stating that extended conversations about the details of the car have occurred, which he has expressly denied to be the fact. 2084

A. Most of the conversations that we had was in re-

gard to the sash, and the time they were made and where they were made.

2085

R-X-Q. 156. It was your conversations then about some old window sash, that had so great an effect in "bringing up things to my recollection," and in "brightening up my ideas" about these old cars, was it?

A. When the testimony was taken in 1868, we had a conversation about repairing the car and fixing the sash, and I told him at the time that I didn't want my name mentioned, as I didn't want to be a witness in the case. We had a conversation in regard to the repair of the car, he asked when it was done and I told him. Recently, after the model was built, he asked me if the model was right.

2086

R-X-Q. 157. I understood you to swear that you had given much thought to these old cars since you gave your affidavit about a year ago, and since your conversation with Mr. Shaffer on the same day, in reference to their construction, is this so?

A. Yes, sir, I have thought over the construction of the car considerable just because it was in my mind. When the matter would come in my mind I would commence thinking back and studying about it.

G. W. NITTERHOUSE.

2087

Attest:

THOMSON H. PALMER,
Special Examiner.

At 9.15 P. M. adjourned to 10 A. M.
tomorrow, Saturday, Oct. 15th. 1881.

CHAMBERSBURG, PENN., }
Oct. 15, 1881. }

2088

Met pursuant to adjournment.

Counsel appearing as before.

Adjourned to Monday Oct. 17, at 10
o'clock A. M.

CHAMBERSBURG, PENNA., Oct. 17th, 1881.

Met pursuant to adjournment.

2089

Counsel appearing as before.

GEN. EDWARD M. BIDDLE, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows :

Q. 1. State your name, age, residence and occupation ?

A. Edward M. Biddle, age 73, residence Carlisle Pennsylvania, I am Secretary and Treasurer of the Cumberland Valley R. R. Co. 2090

Q. 2. When did you enter the employ of the said R. R. Co. ?

A. The 1st. of February, 1839, I was elected Secretary of said road, and a year or two later I was elected Treasurer, and have continued to fill those offices up to the present time.

Q. 3. For a period from about 1839 to about 1850, did the Cumberland Valley R. R. have in use upon its road R. R. cars provided with sleeping accommodations ?

2091

A. Yes, sir ; they had two cars for that purpose.

Q. 4. Did you not occupy a berth in one or the other of those cars during their use upon the said road, for the purpose of resting while travelling over the road ?

A. Yes, sir.

Q. 5. How often did you use a berth in these cars ?

A. I can not say, but frequently.

Q. 6. Please describe the construction and arrangement of the interior of those sleeping cars, in your own way ?

A. A part of the car contained cross seats ; next to them came berths—at least two rows ; beyond these berths was a ladies' apartment cut off by a partition crossing the car, with a door in the partition. In each section of berths there were three berths one above the other, the lower berth was the seat of the car ; the 2092

2093. second or middle berth was formed by raising the back of the seat, which, I think, worked on a hinge of some sort, and was fastened to its place by a bolt at each end going into partitions. The top berth was independent to raise up and let down, and rested, when down, on a cleat at each end, fastened to the partitions, and when raised up was fastened by two straps that buttoned. The upper berth when raised up stood at an angle of 45° or 50° , so as to keep it out of the way of the heads of passengers and to make it look snug, and to contain the pillows and coverings which were used in the berths.

2094. Q. 7. Please explain where the partitions were placed you have referred to?

A. There was a central aisle running through the car and the berths were on each side of said aisle. The berths ran parallel with the car sides. The vertical partitions were placed at each end of the berths to separate one berth from the other and to afford means for supporting them.

Q. 8. How far up did the partitions extend and how far down?

2095. A. The partitions, as I recollect, extended from the floor to the roof of the car, and extended, I think, as far out as the berths when in a position to be slept on.

Q. 9. Am I to understand from your description of the top berth that it swung up and down as if hinged at its back edge?

A. Yes, sir.

Q. 10. And that its front edge is what was fastened by the two buttoning straps?

2096. A. Yes, sir; the two front straps held it up. There were two heavy girding straps extending from the top of the car to the front edge of the upper berth; but I don't know whether they were intended merely to keep persons from falling out of the berth or were used as additional supports. The straps hooked onto the front part of the berth in some way.

Q. 11. Did each berth have a pillow?

A. Yes, sir; each berth had one or more pillows, and each berth had a covering of some sort.

Q. 12. And I understand you that the pillows and covering of each section of berths was placed on the upper berth and stored there by raising that berth up and securing it in its inclined position? 2097

A. That is what I meant to convey.

Q. 13. Whether or not the berths had cushions upon them?

A. The lower berth had a cushion upon it, the second berth was the stuffed seat back, and the upper berth was upholstered with a cushion—all the sections were alike in construction.

Q. 14. Did you ever ride in the upper berth of either of these sleeping cars? 2098

A. Yes, sir.

Q. 15. Did you find it comfortable?

A. Yes, sir; the lower ones were considered more desirable because you did not have to climb up.

Q. 16. Do you remember distinctly in the old cars the partitions at each end of the berths, and upper berths swinging up and down between them as you have described?

A. Of course; I have stated that before.

Q. 17. Please look at the model now shown you marked Defendants' Exhibit Chambersburg Car, and state whether or not you have ever seen sleeping cars constructed and operating like it, and where? 2099

A. I do not remember the interior arrangement of the ladies' apartment. The cross partition dividing off the ladies' apartment and the sections of berths next to the cross partition I do remember; these sections of berths are correctly constructed in the model. I remember the cross seats, but can't tell how many there were. 2100

Q. 18. I call your attention to the fact that the short straps you have described for holding up the upper berth permit the edge of the upper berth to stand off a slight distance from the roof, was that so in the cars themselves?

- 2101 A. Yes, sir ; they couldn't have been buttoned very conveniently, unless they had been a little way off—it was as close as it could be got with that kind of a fastening—my recollection is that it stood as close as it could with that kind of a fastening, but a strap would not allow it to fit very close.

CROSS-EXAMINATION.

X-Q. 19. When you first came upon the Cumberland Valley R. R. did they have one or two sleeping cars in use ?

- 2102 A. Shortly after I came, there was one sleeping car on the road, and sometime after that—a year or so probably—there was another put on ; these are all the sleeping cars the company ever owned.

X-Q. 20. Please state as near as you can the date when the first sleeping car was put upon the road ?

A. I think it was in the early part of 1839.

X-Q. 21. Do you know where this car came from or where it was built ?

A. My impression is it was built in Philadelphia, I don't know who the builder was.

- 2103 X-Q. 22. How long was it after this car was put upon the road before the second sleeper was constructed and put upon the road ?

A. I can't say exactly. It might have been a year or two years.

X-Q. 23. Where was this second sleeping car built ?

A. I don't know where it was built, but the interior was altered to be a sleeping car.

X-Q. 24. Were you secretary and treasurer of the road at the time this second car was made into a sleeper ?

- 2104 A. I can't exactly say whether I was or not, I have no data to fix it exactly.

X-Q. 25. Can you not by thinking a moment recall the year when this second car was so changed as to admit of its use for sleeping purposes ?

A. I can not with any more accuracy than I have already stated it.

X-Q. 26. What particular occasion or demand was there which caused cars with berths to be put upon the Cumberland Valley R. R. at this early day?

2105

A. The object was to accommodate travellers that came in from the west on the stage lines.

X-Q. 27. How long were these cars used for sleeping purposes?

A. I should say about eight or ten years.

X-Q. 28. Why were they taken from the road?

A. Because the character of travel had changed, and because they were worn out as first class cars

2106

X-Q. 29. Were you subpoenaed to come here or did you come voluntarily?

A. I was not subpoenaed, I understood I would be called upon to testify in this case and thought it as well to give my testimony at one time as another, and I came up to-day for that purpose.

X-Q. 30. How long was it after these old sleeping cars were taken from the road before your attention was particularly called to them again?

A. I think it was eight or ten years ago—may be not so long. The testimony on the subject was being taken by some parties.

2107

X-Q. 31. Have you had any conversation with Mr. Shaffer or other old employees of the road in reference to the construction of these cars during recent years?

A. No, sir.

X-Q. 32. Have you what you consider a pretty clear recollection of the way these old cars were constructed?

A. I recollect clearly the construction of the berths.

X-Q. 33. How long ago did you first see this model which you have identified?

A. I think it was about a month ago. I found it in my office here in Chambersburg. That is the first and last time I have seen it until I came here to testify.

2108

X-Q. 34. Have you given much thought to the question of the construction of these old cars since you

found you were to be called on as a witness, and since you saw the model in your office as stated?*

2109 A. No, sir; I have not. My recollection of the cars corresponds with the model since I have seen it.

X-Q. 35. How were these old sleeping-cars heated?

A. By stoves.

X-Q. 36. Was there more than one stove in each car?

A. I cannot tell you what was the stove arrangement of these cars, except I know they were heated by stoves.

2110 X-Q. 37. Can you not recall where the stove, assuming that there was but one in each car, was placed?

A. No, sir; I cannot.

X-Q. 38. How were these old cars lighted at night?

A. They were lighted, but I don't remember whether they were lighted by candle or oil.

X-Q. 39. Do you remember how many lights were used or how they were placed?

A. I do not.

X-Q. 39a. Was there a water-closet in these cars?

A. I cannot say.

2111 X-Q. 39b. How many windows from your own recollection were used for each tier of berths in the gentlemen's apartment?

A. I have no distinct recollection about it. I couldn't tell you how many windows are used in any car now on the road. I don't know whether they have 12 or 20 on each side.

X-Q. 39c. Were there any windows in the ends of these cars?

A. I don't know.

2112 X-Q. 39d. You have testified quite particularly about the partitions in the gentlemen's apartment between the tiers of berths; were these partitions alike in both cars?

A. I don't recollect whether there was any difference or not; in general they were alike.

X-Q. 39e. You do not remember then that the parti-

tions in the first car were scalloped or ornamental on their front edges?

A. I do not, sir.

2113

X-Q. 39f. I understood you to state that the object in raising the upper berths during the day was to have them out of the way of the passengers?

A. That was one object, and another object was to have a place to put the bed clothing out of the way and store it.

X-Q. 40. What, if anything, separated the cross-seat apartment from the apartment having the berths?

A. I think there was nothing separating them. They were all in the same apartment, it strikes me.

2114

X-Q. 41. Please give me the best description you can of the ladies' apartment as to its internal construction?

A. As I stated before, I have no recollection of the manner in which it was arranged.

X-Q. 42. In riding upon these cars as frequently as you did, did it not occur that you would be in the ladies' apartment occasionally?

A. I presume so; I have no doubt of it.

X-Q. 43. Do you not suppose that you were in that apartment of these cars quite a number of times during the period that they were upon the Cumberland Valley Road?

2115

A. I dare say I frequently passed through them; I never occupied it. I suppose I travelled on these cars as often as once a month, and when I slept in them I occupied the gentlemen's apartment.

X-Q. 44. Was the door between the ladies' apartment and the gentlemen's apartment kept closed all the time?

A. Its normal condition was closed.

X-Q. 45. While riding in these cars did you not in addition to passing through the ladies' apartment occasionally see into this apartment through the the open door separating it from the other part of the car?

2116

A. I dare say I did, but I have no recollection about it.

2117 X-Q. 46. May not the straps which were attached to the roof of the car and the front edge of the upper berth, have been buttoned to the roof instead of to the berths?

A. I think not.

X-Q. 47. Are you clear in your memory as to this?

A. The strap came from the roof and buttoned to the front edge of the berth.

X-Q. 48. Are you clear in your recollection that the partitions at the ends of the berths about which you have testified extended clear to the floor?

A. From the roof to the floor, I am.

2118 X-Q. 49. Was the cushion on the lower berth fast or loose?

A. I cannot say that.

X-Q. 50. I understood you to say that you had no distinct recollection as to how the upper berths were fastened to the sides of the car?

A. It was by a hinge, but I don't know what sort of hinge.

X-Q. 51. Was there a blanket and a quilt to each berth?

2119 A. I don't know what the covering was composed of there was one or more pillows and a covering of some sort—a quilt or a blanket for each berth.

X-Q. 52. Did you ever hear any complaints in reference to the loss of sleeping accommodations on the Cumberland Valley Road after these cars were taken off?

A. I never did, because there was not the same demand for sleeping cars that there was before the cars were removed on account of the change in the character of the business of the road.

X-Q. 53. Were these cars kept neat and clean?

2120 A. As much so as any other sleeping cars.

X-Q. 54. Is it not a fact that when these cars were put upon the road they were intended more for the purpose of permitting stage passengers to stretch themselves out and secure a change of position than for sleeping purposes?

A. The object was to afford them sleeping accommodations.

X-Q. 55. Was any effort made to your knowledge 2121
to keep passengers quiet at night in the cross seat
portion of the car, so that those in the bunks in the
other portion of the same part of the car could sleep?

A. They were just as quiet in the cross seat portion
as they were in the bunks.

X-Q. 56. You don't know then that any particular
pains were taken to keep the passengers quiet in the
cross seat portion of the car at night?

A. The passengers on the road were generally well
behaved and didn't require any special effort to keep 2122
them quiet.

X-Q. 57. You mean then that the passengers in the
cross seat portion of the car were as quiet as passengers
usually are in cars not intended for sleeping purposes?

A. That is what I mean.

X-Q. 58. Did you ever know of all the berths in the
gentlemen's apartment being occupied at once?

A. Yes, sir.

X-Q. 59. How many years was it after these cars
were taken from the road before any other sleeping
cars were run upon the Cumberland Valley R. R.? 2123

A. I think last summer was the first time.

RE-DIRECT EXAMINATION BY MR. MUNSON.

R-D-Q. 60. Do you recollect distinctly whatever
structures you have testified to as existing in these
cars?

A. My testimony as given is correct, and whatever
facts I have stated I remember distinctly.

R-D-Q. 61. Is it not the fact that you recollected the
construction and arrangement of the berths between 2124
partitions as described in your testimony before you
ever saw a model?

A. Yes, sir; before I ever saw any model.

R-D-Q. 62. Please explain your answer to X ques-
tion 40?

2125 A. I meant that the partition at the ends of the gentlemen's berths did not extend clear across the car, and that there was no door in it.

E. M. BIDDLE.

Attest:

THOMSON H. PALMER,
Special Examiner.

2126 COL. DANIEL O. GEHR, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows:

Q. 1. State your name, age, residence, and occupation?

A. Daniel O. Gehr; age, 68; residence, Chambersburg, Pa.; and occupation, gentleman; I am a director of the Cumberland Valley R. R.

Q. 2. Between the years 1840 and 1851 how were you engaged?

A. I was engaged partly in railroading and partly in staging.

2127 Q. 3. Were the stages with which you had to do run in connection with the Cumberland Valley R. R. during that time?

A. Yes, sir; the stage-line ran from Pittsburg, Pa., to Chambersburg, Pa., and the stage line with the Cumberland Valley R. R. and connecting roads to Philadelphia, formed a through route from Pittsburg to Philadelphia.

Q. 4. During this period of time did you know of the Cumberland Valley R. R. having any sleeping-cars in use upon it for the accommodation of its passengers?

2128 A. Yes, sir; I did.

Q. 5. Will you please describe the same in your own way?

A. It was a long car with passenger cross-seats in one end, twelve berths for gentlemen in part of it next to the cross-seats. The next apartment was kept for a

ladies' apartment with a division between that and the gentlemen's apartment—a cross-partition with a door in the center which separated the ladies' and gentlemen's apartments. 2129

Q. 6. Was there a central aisle through the car?

A. Yes, sir; there was a central aisle clear through the car, and the door in the ladies' partition closed it; the cross-seats and berths were on opposite sides of this aisle.

Q. 7. Please describe the twelve berths you have spoken of?

A. There were six on each side of the aisle. The lower seat of the car was a berth; the back of the seat was the middle berth when raised up, and was secured in its raised position by bolts at its ends going into the upright divisions at the ends of each berth. These upright divisions extended from the roof to the floor; the upper berth was fastened to the roof of the car in day use, and at night it was let down and its ends rested on cleats that ran across the upright divisions. This berth was hinged at each end of its back edge with a hinge that ran into the partitions at each end of the berth, to which divisions the cleats were fastened. 2130

Q. 8. The back edge of the berth being hinged, do you mean that the upper berth was raised by pressing up its front edge? 2131

Objected to as leading and as suggesting a desired answer.

Question withdrawn.

Q. 9. You have said that the back edge of the upper berths were hinged; please explain how these berths could be raised up to be secured to the roof in day use? 2132

A. The hinge was round like your finger, and went into a hole in the upright divisions, and you swung the front edge of the berth up on these hinges.

- Q. 10. How was this front edge secured to the roof—
2133 I mean by what?
A. By two straps.
- Q. 11. When the upper berth was let down for night
use you say its ends rested on cleats secured to the up-
right divisions at each end of the berth ; was this a hor-
izontal position ?
A. Yes, sir.
- Q. 12. Was there anything provided to keep a pas-
senger occupying this upper berth from rolling out, as
well as to help support his weight ?
A. There were two long straps fastened to the roof ;
2134 that came down and fastened to the edge of the berth
by a button. They were distant about a fourth of the
length of the berth from each end.
- Q. 13. How far out into the car did the upright di-
visions at the ends of these berths extend ?
A. They extended the width of the berths and went
back to the car sides.
- Q. 14. Were there any pillows or bed-clothing for
these berths ?
A. There was a pillow to each berth ; I don't recol-
lect of the clothing now.
- 2135 Q. 15. What was the day arrangement of the middle
berths, up or down ?
A. It was down against the side of the car.
- Q. 16. What was done with the pillows in the day
time ?
A. They were stored in back of this upper berth.
- Q. 17. Any mattresses or cushions on the berths ?
A. The berths were covered—that is, the lower berth
with a cushion ; the middle berth was a stuffed back ;
and the upper berth was stuffed in the same way.
- 2136 Q. 18. Do I understand that the cross-partition cut-
ting off the ladies' apartment had the ends of one set
of berths on each side of the car coming against it ?
A. Yes, sir.
- Q. 19. Did you ever ride in this sleeping-car your-
self ?
A. Yes, sir.

Q. 20. How many times ?

A. Well I suppose one hundred times—very often. 2137

Q. 21. Did you ever ride in the upper berth ?

A. Yes, sir.

Q. 22. Did you find it comfortable ?

A. I found it comfortable and pleasant.

Q. 23. Are you not the same D. O. Gehr who gave your testimony concerning these sleeping arrangements on the Cumberland Valley R. R. in the year 1868 on behalf of the defendants in the suit of the Central Transportation Co. vs. the Chicago, Alton and St. Louis R. R. Co. and George M. Pullman ?

A. I am the same person. 2138

Q. 24. When lying in one of these gentlemen's berths could a person look either way into the next berth ?

A. You could not see lengthwise.

Q. 25. Why not ?

A. Because the upright partitions or divisions ran from the floor to the ceiling and prevented it.

Q. 26. What was the arrangement of the ladies' apartment ?

A. It had a seat the same as the gentlemen's apartment—the lower seat—with a flap for the purpose of increasing the width of the seat when it was converted into a berth. 2139

Q. 27. Please look at the model marked Defts' Ex. Chambersburg Car, now shown to you, and state whether or not you ever saw a sleeping car constructed and operating like this model, and where ?

A. It is like the car I saw and rode in on the Cumberland Valley R. R. as I have testified, except that the front edges of these upright dividing partitions were scrolled, otherwise the model is a correct representation of this old car.

Q. 28. I call your attention to the fact that in this 2140 model the front edge of the upper berth though it goes against the roof when raised up, after having its strap attached stands off a slight distance therefrom ; was this so in the car you have testified about ?

A. Yes, sir.

CROSS-EXAMINATION BY MR. TOWLE.

2141 X-Q. 29. Please state what your duties were in connection with the Cumberland Valley R. R. between the years 1840 and 1851?

A. Part of that time I was one of the proprietors of the car company who ran cars over that road. We had run previous to that time, and our running extended a short time in 1840.

X-Q. 30. In what year did the Cumberland Valley R. R. Co. take possession of the road?

A. To the best of my recollection it was in 1840.

2142 X-Q. 31. May it not have been in 1837?

A. No, sir.

X-Q. 32. After the Cumberland Valley R. R. Co. took possession, what were your duties in connection with the road—what position did you hold?

A. I held no position with the Cumberland Valley Road after they took possession of the road.

X-Q. 33. Please explain what you mean by the term "railroading between 1840 and 1851," as mentioned in one of your answers on direct examination?

2143 A. We had connection with them at both ends of the road—at one end by cars and at the other end by coaches. We booked our passengers through both ways from Pittsburg to Philadelphia.

X-Q. 34. You were not then in fact "railroading" on the Cumberland Valley R. R.?

A. No, sir; only a little while in 1840, when we run our cars on the Cumberland Valley R. R.

X-Q. 35. Please state in what year cars with sleeping bunks were placed upon the Cumberland Valley Road?

A. It was either during 1840, or very shortly afterwards, to the best of my recollection.

2144 X-Q. 36. How many cars of that description were first put upon the road?

A. One car.

X-Q. 37. Did you ever know of another car similar in construction and intended for the same purpose being put upon the Cumberland Valley Road?

A. My best recollection is that a second car was put on afterwards; I don't know how long after.

X-Q. 38. State, if you know, where the first car was constructed? 2145

A. My best recollection is that it was built in Philadelphia, but I do not know by whom.

X-Q. 39. You are, then, unable to state positively whether a second car with sleeping berths was placed upon the road?

A. I can't state anything more than I have stated in regard to that. To my best recollection there was a car put on the road shortly afterwards—it may have been a year or so.

X-Q. 40. Have you any distinct and clear recollection about a second sleeping-car on the Cumberland-Valley Road? 2146

A. I have a recollection of their being a second sleeping-car on the Cumberland Valley Road. That is my best recollection, and it is rather distinct.

X-Q. 41. What kind of a track was used on the Cumberland Valley Road between 1840 and 1851?

A. There was a flat bar up to a certain time when the T-rail was put down, but the flat bar was used most of those years. 2147

X-Q. 42. You have no distinct recollection then about the changing over of a day car at Chambersburg about the year 1843 so as to provide the same with sleeping berths?

A. I have a pretty distinct recollection that a second sleeping-car was put upon the road; I don't recollect the year and do not recollect where it was constructed.

X-Q. 43. About how many years was this so-called sleeping-car in use on the Cumberland Valley R. R.?

A. I can't tell the number of years. It was several years, but I can't tell the exact number. I have ridden in them several years myself. 2148

X-Q. 44. Were you subpoenaed to come here to-day, or did you come at the request of the counsel for the defendants?

2149 A. I was not subpoenaed, I came at the request of
defendants' counsel.

Adjourned to 6.30 o'clock this evening.

6.30 P. M.

Met pursuant to adjournment.

Counsel as before.

Cross-examination of D. O. Gehr continued.

2150

X-Q. 45. How long was it after these cars were taken off from the road before your attention was particularly called to their construction?

A. I don't think my attention was called to it until the suit in 1868, when I gave my testimony.

X-Q. 46. When was your attention next called to these old sleepers and by whom?

2151 A. To the best of my recollection my attention was not called to that sleeper until within five or six days, when Mr. Munson, counsel here, asked me about it and I described it to him.

X-Q. 47. How long ago was it that you first saw the model marked Defts' Ex. Chambersburg car?

A. Between six and ten days ago.

X-Q. 48. Since you saw the model and knew that you were to be called as a witness, have you given much thought as to how this old car was constructed?

A. Not since I saw the model. I had a very distinct recollection of it before I saw the model. I saw the model accidentally.

2152 X-Q. 49. Was it not a fact that before you had thought
over the construction of this old car that your memory
in relation thereto had become quite indistinct?

Objected to as assuming that the witness' testimony has been indistinct in regard to it, when the fact is that he testi-

fied as to the construction of the same on behalf of the complainant, George M. Pullman, when the said Pullman was a defendant sued upon the same patent herein sued upon. 2153

A. No, sir.

X-Q. 50. Was there a water-closet in the car, and if so, in what part?

A. There was a small place fixed for a water-closet in the end of the car in which the ladies' apartment was.

X-Q. 51. How was this car heated?

A. It was heated by a stove.

2154

X-Q. 52. Where was this stove placed?

A. It was in the gentlemen's part of the car. It was near one end of the berth part of it—that is between the cross-partition and the cross-seats, nearer the cross-seats than the partition, as my recollection serves me.

X-Q. 53. How was this car lighted at night?

A. My recollection is that it was lit by candles.

X-Q. 54. Have you any recollection as to where they were placed?

A. I think it was in the center of the car between the berths. I don't know whether they were in each apartment or not. 2155

X-Q. 55. What number of windows, to the best of your recollection, was used for each tier of berths?

A. I don't know whether there was two or three.

X-Q. 56. You have mentioned that there was a space between the rear edges of the partitions between the berths and the side of the car; is this correct?

Objected to as a misstatement of the facts, as the witness has said that the upright partitions extended against the side of the car, and as impertinent, misleading, incompetent and irrelevant. 2156

A. No, sir; not wholly. There was a space of prob-

ably a half an inch between the back edge of the upper berth and the side of the car. It might not have been
2157 as much as that, just room for it to turn. That is what I mean.

X-Q. 57. I understood you to testify that no bedding was used to your knowledge; is this correct?

A. I said that I didn't recollect of any bedding except pillows.

X-Q. 58. In describing the ladies' apartment of the car you mentioned a wide berth on one side with a let-down portion that could be raised up to increase the width for sleeping purposes. What was on the opposite side of the ladies' apartment?
2158

A. On the opposite side was a seat—I don't recollect whether it had a turn-up portion or not. There was a small water-closet in the corner.

X-Q. 59. As near as you can remember did the windows in these cars slide up or let down?

A. They let down.

X-Q. 60. Are you clear in your recollection that the partitions between the berths extended clear to the floor?

A. From the floor to the ceiling.

X-Q. 61. Did I understand you correctly in testifying
2159 that there was nothing to separate the gentlemen's sleeping apartment from the cross-seat apartment except the partitions at the end of the berths?

A. Yes, sir; no closure across there extending from the partitions referred to.

X-Q. 62. You have only testified on your direct examination as to a single car—that is, only positively as to the construction of a single car—which car you stated had scrolled edges on its partitions, and you have further testified that you probably rode one hundred times
2160 or more on this car. Could you have rode as often as this without being in the second sleeping car had there been one?

A. I might have been in the second sleeping car. My recollection is that there was a second sleeping car.

I was most every week over the road and must have been in one or the other of them.

X-Q. 63. Do you remember any car having partitions between the berths straight on their front edges? 2161

A. I don't recollect such partitions with straight edges. I most always rode with McCartney, who had the car with scalloped edges, and I recollect the first car very distinctly.

X-Q. 64. Did you ever hear any complaints as to these so-called sleeping cars—that is, in reference to their sleeping accommodations?

A. No, sir; not to the best of my recollection. On the contrary, stage passengers were delighted with them. 2162

X-Q. 65. How many miles did these stages connecting with these cars have to run?

A. 155 miles.

X-Q. 66. How long a time was consumed in staging this distance?

A. One line 35 hours and the other line from 36 to 38 hours. Both of these lines came in at night.

X-Q. 67. Was it usual for stage passengers, on reaching Chambersburg, to complain of being very tired?

Objected to as incompetent, irrelevant
and immaterial. 2163

A. Yes, tired and sleepy.

X-Q. 68. Did you ever hear stage passengers express a desire for some mode of travel, which would admit of a change of position—I mean a change from the cramped position they had occupied in the stages?

Same objection, and as calling for hearsay. 2164

A. They were very desirous of having a R. R. all the way to Pittsburg.

X-Q. 69. Was it not on account of this desire on the part of stage passengers for some means of travel which

would admit of a change of position that started the use of these so-called sleeping cars?

2165

A. It was principally their desire to get sleep after so long a travel by stage. These sleeping cars were put on more particularly to accommodate stage passengers, but were for the accommodation of all passengers who desired to use them.

X-Q. 70. Did the passengers occupying the gentlemen's apartment remove their clothing when occupying the berths?

2166

A. They removed their boots and some few removed their coats, and some others kept their coats on. The conductors required them to remove their boots.

X-Q. 71. Was any effort made to your knowledge to keep the passengers quiet at night in the cross seat portion of the car?

A. The conductor, Mr. McCartney, made it a point to keep the passengers as quiet as possible.

X-Q. 72. Did you ever hear any regrets expressed about the loss of sleeping car accommodations on the Cumberland Valley Road after these old sleeping cars were taken off?

A. I don't recollect of any regrets.

2167

X-Q. 73. How many years after these old cars were taken off before any other sleeping cars, to your knowledge, were run upon the Cumberland Valley R. R.?

A. I don't think there was ever a sleeping car on the road since then, until this summer, when a Pullman car was put on.

RE-DIRECT EXAMINATION.

R-D-Q. 74. Has not the Pullman car been taken off of the Cumberland Valley Road?

2168

A. Yes, sir.

R-D-Q. 75. Have you heard any one express any regret that the Pullman car has been taken off of the Cumberland Valley R. R.?

A. I have heard no regrets about it.

R-D-Q. 76. Have you travelled in a Pullman sleep-

ing car and laid down upon its shelf or bunk without removing more of your clothing than your coat and boots? 2169

A. Yes, sir; I always travel so, in Pullman cars.

R-D-Q. 77. Have you any interest of whatever character to be affected directly or indirectly by giving your testimony in this case?

A. I have none.

D. O. GEHR.

Attest:

THOMSON H. PALMER,
Special Examiner.

Adjourned to to-morrow morning, Oct. 18th, at 10 o'clock, A.M. 2170

CHAMBERSBURG, PENNA., }
October 18th, 1881. }

Met pursuant to adjournment, Counsel appearing as before.

ABRAHAM S. HULL, a witness produced by and on behalf of the defendants, being duly sworn, testified as follows: 2171

Q. 1. State your name, age, residence and occupation?

A. Abraham S. Hull, age 55, residence Chambersburg, Pa., and occupation, master mechanic of the machinery department of the Cumberland Valley R. R.

Q. 2. When did you first come to Chambersburg?

A. In the spring of 1838. 2172

Q. 3. When did you first go into the employ of the Cumberland Valley R. R.?

A. I think it was in September or October, 1844.

Q. 4. When did you thereafter leave its employ?

A. Early in April, 1848.

Q. 5. And when did you next return to its employ?

A. In June, 1852.

2173 Q. 6. Have you been constantly in the employ of that R. R. since June, 1852?

A. Yes, sir.

Q. 7. During the period of time between September or October, 1844, and April, 1848, when you left the road, did the Cumberland Valley R. R. Co. have in use running upon its road any sleeping cars for the accommodation of its passengers?

A. Yes, sir.

Q. 8. How many?

2174 A. Two.

Q. 9. Were you often in one or the other of them during that period of time?

A. Yes, sir.

Q. 10. Please describe the internal arrangement of those cars in your own way?

2175 A. The cars had a ladies' apartment formed by a partition running across the car with a door in it, next was the gentlemen's apartment with two vertical rows of berths on each side of the aisle, with partitions at each end of the berths running up to the roof. There was cross seats at the other end of the car. It was first the ladies' apartment, then the gentlemen's berths and then the cross seats; that filled the cars. There was a central aisle running through the car.

Q. 11. From your description, I understand that there were two vertical rows or sections of berths on each side of the aisle with partitions at each end of the berths, which berths were situated between the cross-seat portion of the car and that part cut off by the cross-partition to form the ladies' apartment; am I right?

A. Yes, sir.

2176 Q. 12. How many berths high were there in each section?

A. Three.

Q. 13. What made the bottom berth?

A. The seat.

Q. 14. What made the middle berth?

A. The back of the seat formed the second berth by raising it up. It was hinged at the back part and was raised up, and two bolts, one on each end, would slip into mortises in the partitions. 2177

Q. 15. How was the upper berth constructed and operated?

A. The upper berth had two hinges at the back edge so that it could swing. To use it as a berth it was let down to a level and secured by two bolts, one at each end, slipping into mortises in the partitions. When raised up it had two straps, one at each end, fastened to the roof, which came down and fastened over the edge of the berth. There was an eye in the straps which went over a long heavy button. 2178

Q. 16. When this berth was down to be slept upon, do you remember any long straps coming from the roof for any purpose?

Objected to as leading.

A. Yes, sir; there was a long strap at each end. These straps had a buckle on the end which fastened to a hook on the berth.

Q. 17. Do you remember any peculiar hinges by which these upper berths were hung? 2179

A. I recollect the hinges were curved hinges. I supposed curved to give strength in screwing it on to the berth. The end of the hinge turned in the partitions in a hole.

Q. 18. These partitions at the ends of the berths which you have said went to the roof; how far down did they go?

A. To the floor of the car.

Q. 19. And widthwise how far?

A. From the car sides out as far as the berths came. 2180

Q. 20. Do you remember whether the front edge of these partitions was fancy or scalloped?

A. They were scalloped. I am confident they had scalloped edges.

Q. 21. Did you ever ride in these berths?

- A. Yes, sir.
- 2181 Q. 22. Were you not in the cars a great many times ?
A. Yes, sir.
Q. 23. Were there cushions on the berths ?
A. These berths were upholstered.
Q. 24. Did they have pillows ?
A. Yes, sir.
Q. 25. Any bed clothing ?
A. I don't recollect.
Q. 26. Were the cars comfortable ?
A. Yes, sir.
Q. 27. What was in the ladies' apartment ?
2182 A. One sleeping berth or seat on each side.
Q. 28. Do you remember any flap on the edge of the long seat that raises up to make it wider ?
A. Yes, sir.
Q. 29. When you came back to the road in 1852 were there any sleeping-cars running upon it ?
A. I think not.
Q. 30. Please look at the model now shown you, marked Defts' Exhibit Chambersburg Car, and say whether or not you have ever seen sleeping-cars constructed and operating like it, and where ?
2183 A. It is like the sleeping-cars I have testified to as having been run on the Cumberland Valley R. R., except that the partitions between the gentlemen's berths had scalloped fronts, and except that the upper berths were fastened by bolts at each end, and not by cleats, as shown in the model.
Q. 31. I call your attention to the fact that these upper berths when fastened up stand a little ways off from the roof, was that so in the car ?
A. Yes, sir.
Q. 32. Where were the pillows carried in the day
2184 time ?
A. They were carried on the upper berth when it was raised up.

CROSS-EXAMINATION BY MR. TOWLE.

X-Q. 33. Were you subpoenaed to come here to-day 2185
as a witness, or did you come voluntarily at the request
of defendants' counsel?

A. I came at his request, and was not subpoenaed.

X-Q. 34. What were you doing for the Cumberland
Valley R. R. between 1844 and 1848?

A. Firing a locomotive engine until the 1st of March,
1845. I then went into the shop to learn the machine
trade and stayed until 1848.

X-Q. 35. What was your occupation between April,
1848, and June, 1852?

A. Machinist, working for the State of Penn. at Parks- 2186
burg, Pa., and for the Erie R. R. at Piermont.

X-Q. 36. What have been your duties in connection
with the Cumberland Valley R. R. since June, 1852?

A. I worked in the machine shop till July, 1857,
when I was appointed master mechanic.

X-Q. 37. Between 1844 and 1848, while you were
acting as fireman and learning your trade as machinist,
did you have occasion to give any particular attention
to the passenger cars that were then in use upon the
road?

A. Yes, sir; particularly in firing. 2187

X-Q. 38. Please explain why it was necessary for you
to pay attention to the passenger cars on the train while
your duties were in connection with the engine?

A. During my apprenticeship and while fireman, I
was obliged to be out on the road. In leaving here in
the morning, we would get to Bridgeport, and had to
wait frequently on the train as the bridge was burnt
down at the time, 1844, and I went into the cars to
warm or wait the arrival of the train, sometimes two or
three hours. I was in those cars a great deal. 2188

X-Q. 39. Did you usually go into the cross-seat por-
tion?

A. At times I did.

X-Q. 40. State to the best of your recollection how

often it happened between 1844 and 1848 that you went into the sleeping apartment of these cars?

2189 A. That I can't answer. I never went in unless I had some business or was asked in by the conductor; the other part we sat down in. I have been in the sleeping apartment a great many times.

X-Q. 41. I understand you to mean that you were only in the sleeping apartment of the car occasionally, when compared with the number of times that you went into the cross seat portion, is this correct?

A. Yes, sir.

2190 X-Q. 42. Please state the year when the first car with sleeping accommodations was put upon the Cumberland Valley R. R.?

A. I can't answer that.

X-Q. 43. How long ago was your attention particularly called to these old sleeping cars?

A. In 1844.

X-Q. 44. When was your attention next called to them?

A. That I can't answer.

X-Q. 45. Was it two years ago or two months ago?

2191 A. I can't set any time. Mr. Munson has recently called my attention to them.

X-Q. 46. Have you ever had any conversations with Mr. Shaffer or other employees of the road, in reference to the construction of these cars?

A. We have talked over the matter but not on any particular point about them. We have talked about sleeping cars.

X-Q. 47. About how long ago was it that you had your first conversation with Mr. Shaffer or other employees, in reference to these old cars?

2192 A. They have been mentioned off and on for years in a general way.

X-Q. 48. How many different times do you suppose these old cars have been mentioned in conversations?

A. That is a question I can't answer. It was only the ordinary talk between mechanics in the shop.

X-Q. 49. Has it not been a good many times?

A. I don't think it has.

X-Q. 50. Is it not a fact that you have heard these old cars talked about during the last few years as often as twenty times? 2193

Objected to as misleading and deceptive and as a flagrant attempt to induce the witness to say that there have been many conversations between him and others about the construction of these cars, when the witness has already sworn that only such mention of the cars has been made as would occur between mechanics constantly together in the same shop who each knew equally well about them. 2194

A. I have heard them spoken about I suppose as often as that, it may have been more or less.

X-Q. 51. You have stated that these old cars have been spoken about. Has anything ever been said to your knowledge in reference to the construction and arrangement of the upper berths—I mean between the employees in the shop and yourself?

A. There has. In speaking of the upper berths, I spoke to Mr. Shaffer about the upper berths. He and I have had conversation about the upper berths. All the conversation I had with Mr. Shaffer was that I passed through the shop when the model was being built there, I saw strips holding the upper berths which I did not recognize, but knew that there were bolts, and spoke about it. That is all the conversation I had with Shaffer about it. 2195

X-Q. 52. Did you hear anything said about these old sleeping cars—that is by the employees of the road—or did you have any conversation about them with employees of the road—about a year ago? 2196

A. No, sir.

X-Q. 53. Did you know of the giving of affidavits about a year ago for use in a suit in Baltimore?

A. I don't know of any affidavits, I don't know of any.

2197 X-Q. 54. Did you not know that some person was here about that time securing affidavits or evidence for use in a suit?

A. I don't know of any affidavits, I have heard said that some one was here about that time, but of my own personal knowledge I don't know it.

X-Q. 55. Did not the fact of your hearing that someone was here at that time cause you to think more or less about the old cars?

A. No, sir.

2198 X-Q. 56. When did you first see this model marked defendants' exhibit Chambersburg car?

A. Within the past month?

X-Q. 57. Did you not see it while it was being constructed?

A. Yes sir,

X-Q. 58. How many times?

A. Well, I might have seen it every day for about three weeks as I passed through the shop?

X-Q. 59. How long ago was the construction of this model commenced, as near as you can recollect?

2199 A. I think it was building about two or three weeks.

X-Q. 60. How frequently have you seen this model since it has been here in this office?

A. I suppose I have seen it some three or four times.

X-Q. 61. Have you within a year and more, especially since you ascertained that you would be examined as a witness, given much thought to the way these old cars were constructed?

A. Yes, sir.

2200 X-Q. 62. Was or was not your recollection of these cars—that is in reference to the details of their construction—quite dim 18 months or two years ago?

A. No, sir.

X-Q. 63. What has been the effect upon your mind or memory of your thinking about them as you have stated, and of seeing the model?

A. As I see the model it brightens my memory up more.

X-Q. 64. Have you given, during your connection with R. R. business, sufficient attention to passenger cars in general so as to be well posted as to their construction—I mean their general construction? 2201

A. Yes, sir.

X-Q. 65. Please state how these old cars were heated?

A. They were heated with a small coal stove, one to each car.

X-Q. 66. Where was this stove placed?

A. I think in the center of the car, as near as I can recollect—very near the center, in the center aisle. 2202

X-Q. 67. That would locate it in the apartment having sleeping berths for gentlemen, would it not?

A. Yes, sir.

X-Q. 68. How wide was this aisle extending through the car in which you state the stove was placed?

A. I should think about three feet or three feet and a half; no less than three feet.

X-Q. 69. As near as you can now remember, how far were the lower berths from the stove. I mean the edges of the lower berths on opposite sides from the stove? 2203

A. It was a small stove that tapered up. I don't believe that that stove was more than 14 or 15 inches at the bottom and tapered up to about 12 inches at the top. There was room enough to pass on each side.

X-Q. 70. Was the stove tall enough to extend up to the middle berth when raised?

A. I can't answer that question.

X-Q. 71. Would a stove of the dimensions you have stated give sufficient heat in the winter to warm the two other apartments of the car? 2204

A. I know when I rode in it it was hot enough. I suppose it would warm the car the way that car was built.

X-Q. 72. Did you ever suffer any from heat coming

from this stove when riding in the bunks of the gentlemen's apartment?

2205 A. I know in April, 1848, when I left town, I slept in the upper berth, and I suffered from the heat in the car that morning.

X-Q. 73. Do you mean from the heat coming from the stove?

A. Yes, sir.

X-Q. 74. How were these cars lighted at night?

A. I am not able to say.

X-Q. 75. Was there any water-closet in these cars?

A. That I cannot state.

2206 X-Q. 76. What recollection have you independent of the model as to the number of windows for each tier of berths in the gentlemen's apartment?

A. I can't give any description of the windows or of those parts that you have just asked about, I mean I can't give any description of the windows.

X-Q. 77. How wide were the lower berths?

A. I do not know.

X-Q. 78. Have you any recollection as to the width of the middle or upper berths?

A. I have not.

2207 X-Q. 79. Can you give me the width of the partitions at the ends of these berths—the number of inches?

A. I can't give it.

X-Q. 80. Was there anything separating the gentlemen's sleeping apartment from the cross-seat apartment except the partitions at the ends of the berths?

A. No, sir.

X-Q. 81. Do you remember how the windows operated, whether they raised up or let down?

A. No, sir; I don't remember.

2208 X-Q. 82. You have testified that the upper berths when let down and used for sleeping purposes were secured by bolts passing into adjoining partitions. Is this on reflection your best recollection about the construction of this portion of the car?

A. Yes, sir.

X-Q. 83. I understood you to testify that the front

of the upper berths were scolloped. If I understood you correctly, please describe more fully what you mean? 2209

Objected to as a gross misstatement of the testimony, and as misleading, deceptive, scandalous and incompetent, as the witness has distinctly testified that the front edge of the partition was scolloped, and has nowhere stated that the front edge of the berth was scolloped.

A. I didn't say that the edge of the berth was scolloped; I said that the front edge of the partition was scolloped. 2210

X-Q. 84. Were the partitions in both of these cars scrolled or scolloped?

A. My recollection is that the partitions of the cars were scolloped.

X-Q. 85. I understand your last answer to have reference to both cars; is that correct?

A. Yes, sir; that is correct.

X-Q. 86. Do you remember any shelf at one side of the ladies' apartment in either of these cars? 2211

A. Yes, sir; there was a shelf in the ladies' apartment that run lengthwise above the seat.

X-Q. 87. I understood you to say that you have no recollection of the use of any bed clothing in either of these cars; is that correct?

A. Yes, sir.

X-Q. 88. You answered after describing the middle berth in answer to question 14 that the upper berth had "two hinges at the back edge so that it could swing;" did you mean to be understood as testifying that the hinges on the middle and upper berths were of the same kind? 2212

A. Yes, sir; I know the upper berth had curved hinges, but I don't know what kind of hinges the middle berth had.

(By error no X-Q 89.)

2213 X-Q. 90. May not, then, both the middle and upper berths, as far as you know, have had the same kind of hinges?

A. No, not as far as I know; I don't know what kind of hinges the middle berth had.

X-Q. 91. Was any effort ever made to your knowledge to keep the persons quiet at night in the cross-seat apartment?

A. No, sir; I don't recollect of any.

X-Q. 92. For what use were these sleeping-cars more particularly intended?

A. They were intended for sleeping cars.

2214 X-Q. 93. Did you or did you not understand that they were especially intended for the use of stage passengers?

A. They were used for the accommodation of stage passengers.

RE-DIRECT EXAMINATION.

R-D-Q. 94. Did not other persons than those coming by the stage use these sleeping cars?

A. Yes, sir.

2215 R-D-Q. 95. Did you ever measure the dimensions of any of the parts of those sleeping cars?

A. No, sir.

R-D-Q. 96. Have you any interest of any sort to be affected by giving your testimony here to-day?

A. No, sir.

2216 R-D-Q. 97. I understand that in being frequently through the shops, of which you have charge, and where the model referred to here was built, you have occasionally spoken to Shaffer and other workmen, or they have spoken to you about these old sleeping cars; that you have had no conversation with them about the details of its or their construction, but that the communications have been casual and passing remarks, except the statement you have spoken of when the model was done, is that so?

Objected to as being a gross misstatement of the testimony of this witness, who has distinctly and clearly sworn to conversations of greater or less duration at various times in reference to these old cars; and further as being an evident attempt on the part of the defendants' counsel to instruct the witness as to an answer which he is exceedingly anxious to have the witness give. 2217

A. That is correct.

R-D-Q. 98. Have you ever had any talk with any one which was calculated to put things into your mind about these cars, or has any one attempted to do so? 2218

A. No, sir.

R-D-Q. 99. Is what you have sworn to here to-day from your own memory of the cars themselves?

A. Yes, sir; it is.

R-D-Q. 100. While the model was building did you examine it, until after it was done?

A. No, sir.

R-D-Q. 101. And the times you saw it in this office, do you mean that you merely noticed it here while passing through on other business? 2219

A. Yes, sir.

R-D-Q. 102 Do you remember the bolts at the ends of the upper berths to fasten it and the peculiar hinges it had as you have described—I mean clearly remember them?

A. Yes, sir; I do.

RE-CROSS EXAMINATION.

R-X-Q. 103. Do you mean to be understood that you never looked at the model while passing through the shop during the time that it was being constructed? 2220

A I mean I have not examined it. Of course I noticed it while going through the shop some half a

dozen times a day ; sometimes I would not even notice it. I never examined it while it was being constructed.

2221 R-X-Q. 104. Will you swear positively that you never stopped to look at that model during the time it was being constructed in the shop ?

A. I have stopped to look at it ; I don't know that I stopped particularly to look at it—my business called me near it.

R-X-Q. 105. Will you swear positively that you never stopped to look at that model while it was being constructed ?

A. Business called me into that shop and of course I would see and look at the model, but I never went particularly to examine it.

2222 R-X-Q. 106. I repeat the question. Please state whether you are willing to swear that you never stopped even on a single occasion to look at that model while being constructed in the shop ?

A. I may have done so.

2223 R-X-Q. 107. In answer to X question 61, in which you were asked if you had given much thought to the construction of these old cars within a year or more you stated that you had done so, and in answer to X question 63, in reference to the effect upon your mind or memory of thinking about these old cars as you have stated and of seeing the model, you answered that the effect had been to brighten your memory up. Do you wish to change your answers to these questions ?

This Re-X examination of the X examination is objected to as incompetent, irrelevant and immaterial, and as not proper Re-X examination.

2224 A. No, sir ; I do not.

ABRAHAM S. HULL.

Attest :

THOMSON H. PALMER,
Special Examiner.

Adjourned to 10 o'clock A. M. October 19, 1881, at
58 South Maine St., the place of business of the next
witness. 2225

58 South Main St. }
CHAMBERSBURG, PENN., }
October 19th, 1881. }

JAMES C. AUSTIN, a witness produced on behalf of the
defendants, being duly sworn, testified as follows :

Q. 1. State your name, age, residence and occupa- 2226
tion ?

A. James C. Austin ; age, 58 ; residence, Chambers-
burg, and occupation, wholesale and retail boot and
shoe merchant.

Q. 2. Please state whether or not you ever saw in use
upon the Cumberland Valley R. R., cars provided with
sleeping accommodations for passengers, and if yea,
when ?

A. Yes, sir, I have—two cars—I saw them in the fall
of 1847.

Q. 3. Running between what points? 2227

A. Chambersburg and Harrisburg.

Q. 4. Did you ride over said road in these sleeping
cars, and if yea, state about how often ?

A. I did, three or four times.

Q. 5. When you made your first trip over this road in
one of these sleeping-cars did you particularly examine
it ?

A. Yes ; I was interested in the form of the con-
struction of it and examined it carefully ; I have a
mechanical turn of mind, and examine new things with
considerable care and attention and interest. 2228

Q. 6. Did you occupy a berth each time you mention
having been in a sleeping-car upon this road in going
from Chambersburg to Harrisburg ?

A. Yes, sir ; and I have returned in the car in the
day time.

Q. 7. Please describe the inside arrangements of these sleeping-cars?

2229

A. This car was divided into apartments ; one part was for sitting—about a third of it, and the rest was for sleeping, in two apartments. The sleeping apartments were provided with berths along each side of the aisle. There was three berths high, one above the other, in each apartment. The lower berth was the seat, and the second was formed by lifting up the back of that seat, which back was hinged to the side of the car and lifted up to form a second berth and was bolted into the partitions. There were partitions at each end of the berths. These partitions were board partitions, going up and down from the floor to the roof. The upper berth was hinged also at its back and let down horizontally to sleep on. This berth when let down rested on cleats or something to support it in its horizontal position. There were straps or belting of some kind that came down from the roof and hooked onto the edge of the berth, or extended from the edge of the berth and hooked to the roof, I don't recollect which.

2230

Q. 8. Did the sitting part of the car have cross seats?

A. Yes, sir ; an aisle in the middle with cross seats each side.

2231

Q. 9. Do you remember whether or not one end of the car was partitioned off by a cross partition with a door in it to form a ladies' apartment?

Objected to as leading.

A. Yes, sir ; that was so.

Q. 10. You have described one section or apartment of berths three high ; how many such sections or apartments were there on each side of the car between these cross seats and the ladies' apartment?

2232

A. I recollect of only two on a side.

Q. 11. And I understand from your description that the partitions going up and down from the floor to the roof were at each end of these sections or apartments, is that correct?

A. That is correct.

Q. 12. When lying in the berth could a person look from one berth forward or rearward into the next? 2233

A. Oh, no; the partitions prevented it.

Q. 13. How far did these partitions extend widthwise?

A. Out as far as the seats came and went back against the wall of the car. They were made of tongued and grooved boards.

Q. 14. Did the berths have cushions or mattresses upon them?

A. Yes, sir; I think the lower one had a cushion; don't remember whether it was fast or loose. The middle berth cushion was fast; I can't say whether the cushion of the upper berth was fast or not. 2234

Q. 15. Were there pillows for these berths?

A. Yes, sir.

Q. 16. Any coverings or blankets?

A. Yes, sir.

Q. 17. In the day use of the car what was the position of the middle berth?

A. It formed the back of the seat.

Q. 18. What was the position of the upper berth in day use?

A. It was swung up towards the roof, its front edge I mean. It went up pretty near the roof. I think there was some space there. It was held up there either by bolts at the ends or straps. 2235

Q. 19. What was done with the pillows and covering in the day use of the car?

A. They were kept up behind this upper berth.

Q. 20. Do you remember the conductor's name?

A. Major McCartney.

Q. 21. Did you know Conductor Rittner?

A. I knew him.

Q. 22. At what hour did you leave Chambersburg when taking this sleeping car? 2236

A. About one o'clock at night.

Q. 23. Did you regard the sleeping accommodations as comfortable and desirable?

A. Yes, sir; I did.

Q. 24. Do you remember what was the arrangement in the ladies' apartment ?

2237 A. I don't know that I recollect anything very different in it from the gentlemen's. I never travelled in these cars with a lady.

Q. 25. But you are clear in your recollection about apartments or sections of berths midway of the car, each section or apartment having a lower, middle and upper berth, with partitions at their ends going from the floor to the roof and isolating one section from another, the upper berth of which was arranged to swing on its rear side so that its front edge raised upward toward the roof and was there suspended or held in an inclined position during day use, and which upper berth could be let down to a horizontal position and secured there to be slept on as you have described, are you ?

2238

A. Yes, sir ; it is very distinct in my mind.

Q. 26. Have you ever seen any model or other illustration of these sleeping cars you have just testified about ?

A. No, sir ; I have not. I never saw a model or picture or anything else illustrating them.

2239

Adjourned to to-morrow, October 20th,
at 8 o'clock A. M., at the office where the
Exhibit model now is.

CHAMBERSBURG, Penn., }
October 20th, 1881. }

Met pursuant to adjournment.

Counsel as before.

2240

Examination of JAMES C. AUSTIN continued

Q. 27. I now show you a model, marked in this cause Defendants' Exhibit Chambersburg Car, and ask you to examine the same, and after having done so state

how correctly it corresponds with the construction and operation of the sleeping-cars you used and saw in use upon the Cumberland Valley R.R. as testified by you? 2241

A. It illustrates those cars very fully and correctly. I may say that while I remember in the ladies' department the long sofa and the shelf too, now that I have seen the model, but I do not remember that the depending front part of that lounge was capable of raising up. I remember it was there, but don't remember ever seeing it raised up. This model shows cleats for supporting the upper berths. I remember the cleats and also the bolts on the ends of the berths. I had forgotten about the peculiar swinging backs of the cross seats; I mean the pattern or form of them, but seeing them in the model it comes to me very distinctly. 2242

Q. 28 I call your attention to the hinges on the upper berths—do you remember them?

A. Yes, sir; last night I could not recall the kind of hinge, but now that I see the hinges in the model it brings them very clearly to my mind. I remember now that they were constructed as in the model and went into the partitions.

Q. 29. Last night you were in doubt about the operation of the straps in connection with the upper berth. I call your attention that in the model the upper berth is provided with two long straps, attached to a strip at the roof, and have a square loop at their lower ends, which hooks over hooks on the edge of the berth, can you now remember or recall to your mind that that was the construction in the cars themselves? 2243

A. I do.

Q. 30. And I call your attention to the two short straps that come from the roof and button onto its face to hold it in its inclined position—was that so in the cars? 2244

A. Yes, sir.

Q. 31. How long did these cars run to your knowledge?

A. From 1847 to '51 or '52, I think.

CROSS-EXAMINATION BY MR. TOWLE.

2245 X-Q. 32. Since these cars were taken off from the Cumberland Valley Road and prior to your being spoken to in reference to testifying in this cause, has your attention ever been specially called to them?

A. No; I recollect several different times during past years of talking with gentlemen in regard to these cars being on this road.

X-Q. 33. Please state as near as you can when and with whom you have conversed in reference to the construction of these old cars?

2246 A. I don't recollect of ever having talked with anybody about the construction of the cars. It happened in this way: In speaking of the convenience of sleeping cars, gentlemen who were familiar with the past history of this road have spoken about there being sleeping cars on this road so long ago that ran in connection with the stage line from Pittsburg. I never had any conversation with anybody with regard to the construction of these sleeping cars. The only time has been recently, a few days ago, when Mr. Heyser met me on the street and told me that he had just come off of the
2247 witness stand testifying in regard to the old sleepers that used to run on this road. I replied that I had travelled in those same cars and that I supposed if they knew that they would be wanting me to testify. He replied they will be after you. I replied don't you tell them, for I have no time to spare. That was all that occurred between me and Mr. Heyser. The next thing that occurred was that Mr. Munson called upon me to know what I knew.

X-Q. 34. Since your conversation with Mr. Heyser have you given much thought in reference to these old cars?
2248

A. Not a great deal of thought. My mind has been occupied with business—what I mean is I have not given my entire thought to it, but between times I have thought of it considerable.

X-Q. 35. Had not your mind become quite dim in

reference to these old cars previous to your thinking about them, as you have testified since you met Mr. Heyser? 2249

A. No; my mind is too active to get dim.

X-Q. 36. Has not your thinking about these cars had the effect to a great extent of bringing them back to your mind.

A. Not a great extent.

X-Q. 37. Please state what effect has been produced upon your memory by your examination of this model Exhibit Chambersburg car.

A. The general construction of the car is exactly as I have had it in my mind since the fall of 1847. The minor points—the location of the ladies' and gentlemen's apartments, I was not clear about until I saw this model. I was very clear in regard to the two separate apartments, or sections of berths with upper, middle and lower berths on each side of the aisle, that the lower berth was used for a seat during the day, the middle berth was formed by lifting the back of the lower berth to a horizontal position on hinges, securing it to the side of the car, and held in a horizontal position by bolts running into the partitions at each end; the upper berth was formed by being let down from an inclined position in which it stood from the windows toward the roof to a horizontal position, where it rested on cleats, or bolts, going into the partitions, I didn't remember which until I saw the model. I now remember both bolts and cleats. I also remembered that there were long straps, as a guard, in connection with the upper berth, and there was a peculiarity about these straps that enabled them to be used both when the berth was let down and for holding it up, but it was not clear in my mind how they were constructed until I saw the model, but it is clear now and the model is correct. 2250 2251 2252

X-Q. 38. Were you clear in your memory before seeing the model as to their being only two tiers of berths on a side?

A. I was clear that there was two, but not clear

2253 whether the ladies' apartment formed one of those two or was in addition. My recollection was that the cross seats occupied about one-third of the car; that the sleeping arrangements took up the remainder of the car. I did not know the length of the car or whether the remainder was composed of three sections or tiers of berths on a side, but I was very clear that there was at least two tiers of berths between partitions on each side as I have described; but upon seeing the model I am fully satisfied it represents the car as I then saw it, because it brings back the ladies' apartment to my mind.

2254 X-Q. 39. Were you clear in your memory before seeing the model as to the number of tiers of berths in the gentlemen's apartment?

A. I have already said that I was not certain whether one of these two tiers or sections was for ladies or not.

X-Q. 40. I understand you to remember distinctly independent of the model that there was a cross-partition extending clear across the car which separated the ladies' apartment from the remainder of the car; is this correct?

2255 A. Yes.

X-Q. 41. I understand you to mean by your answer to cross-question 39 that you were not clear before seeing the model whether there were one or two tiers of berths on a side between this partition and the cross-seats?

A. That is correct; but I did recollect that there were two tiers on a side, but I didn't recollect but that one tier on a side might have been in the ladies' apartment. The model is correct according to my recollection now after seeing it.

2256 X-Q. 42. May there not have been a closet at one end of the gentlemen's sleeping apartment?

A. No, sir.

X-Q. 43. What recollection have you as to whether the cushions on the lower seats were fast or loose?

A. I don't remember whether they were fast or loose.

X-Q. 44. Previous to seeing the model please describe your best recollection of the ladies' apartment in which you have testified you were frequently?

2257

A. I can't say that I was in that apartment frequently, but I am satisfied I was in it. My recollection of the ladies' apartment was this—I had not a clear recollection of the construction of the ladies' apartment: On my first trip in these cars I came through in a stage-coach on the Pittsburg road from 30 miles west of Chambersburg. I applied to the conductor for a berth. He replied that through passengers must be

2258

served first. I remarked that here were plenty of berths; he replied one of these apartments are for ladies. I asked which. He answered this one, pointing through to the other apartment from which we then stood. I replied there are no ladies in it. He answered, but there may be, and if, after through passengers from Pittsburg are served, there are any berths left you shall have one. The berths were not all taken by through passengers, and I was given a berth in the gentlemen's apartment. I noticed the ladies' apartment, but did not examine it carefully at that time. On my return trip I remember passing through, but it was then arranged for day use.

2259

X-Q. 45. In answering my last question you do not seem to have given your recollection of the ladies' apartment before you saw the model; will you please do so now?

A. My recollection of the ladies apartment was that it was similar to the gentlemen's, except that I didn't know whether the back of the seat raised up, as I never saw that apartment arranged for sleeping, but I did remember the shelf above the berth.

2260

X-Q. 46. I understood you to say that it was your best recollection before seeing the model that the upper berths were held up by bolts when in their raised position?

A. I said I did not remember whether they were held

up in their raised position by bolts or straps. I remembered that there were both bolts and straps used, but it was not clear to me how the arrangement was until I saw the model.

X-Q. 47. And you, as I understood you, before seeing the model, had no distinct recollection as to the long and short straps used in connection with the upper berths?

A. I had a clear recollection of the straps, but I didn't remember the arrangement of them.

X-Q. 48. As you remember them, were the partitions between the tiers of berths straight or scalloped?

2262 A. My recollection is both, that some were plain and some scalloped.

X-Q. 49. Do you remember of there being any water-closet in these cars, and, if so, where?

A. I am positive there was a water-closet, but can't tell whether it was in the end where the cross-seats were, or at the other end; it was in one corner of the car.

X-Q. 50. How were these cars lighted at night?

A. To the best of my recollection it was a candle.

2263 X-Q. 51. Have you any recollection as to where these candles were placed?

A. They were placed sometimes on the side and sometimes hung from the roof.

X-Q. 52. Where on the side were they placed?

A. I can't tell where they were placed positively, but my impression is on the side of the car over the cross seats in that part of the car, and hung from the roof in the other part.

X-Q. 53. What is your recollection as to the number of windows used for each tier of berths, independent of the model?

2264 A. I have no recollection of the number.

X-Q. 54. If you don't remember the number of windows, have you any recollection as to whether they could be raised up towards the top of the car or dropped down behind the seats?

A. I don't remember that. My impression is that in

the first car I rode in, they let down, but I wouldn't be positive.

X-Q. 55. Please state how these cars were warmed or heated ? 2265

A. By stoves ; I am not positive, but my impression is that there was a stove at the inner end of the cross seat portion between the last partition of the berths on one side of the aisle. The other stove, my impression is, was at the other end in the ladies' apartment, close to the end.

X-Q. 56. Is this your recollection as to both cars ?

A. Yes ; except I am not clear about the first stove being at the inner end of the cross seats ; it may have been at the outer end ; my impression is I have seen them in both places. 2266

X-Q. 57. Was there anything separating the part having the berths for gentlemen's use, from the cross seat portion, excepting the partitions at the end of the berths ?

A. I think there was a curtain that opened in the middle and looped back. I would not be positive, but that has always been my impression.

X-Q. 58. Was any effort ever made to your knowledge to keep the passengers quiet at night in the cross seat portion of the car ? 2267

A. No ; I don't remember of any, I don't recollect of any noise.

X-Q. 59. Are you clear in your recollection, independent of the model, which you have examined, that none of the upper berths in these old cars were stationary ?

A. No, sir ; I am not, because I remember, as I said before, in passing through this ladies' apartment, that what I thought, was an upper berth, was a stationary shelf, but I am clear that in the gentlemen's apartment all of the upper berths swung up at an angle. 2268

X-Q. 60. But as I understand your previous testimony, you are not clear in your recollection, or were not before you saw the model, as to whether there was not one tier of berths in the ladies' apartment, that is on the ladies' side of the cross partition ?

A. Yes, I am clear.

2269 X-Q. 61. Do you wish to be understood now as changing your answer to cross question 41, in which you said that before seeing the model, it was your recollection that there were two tiers of berths on a side, but didn't recollect but that one tier on a side might have been in the ladies' apartment?

A. I do not.

X-Q. 62. Did you understand that the upper berths were raised up during the day for the purpose of keeping them out of the way of the heads of the passengers?

2270 A. That was one reason, and another reason I noticed they kept their pillows and bed clothing behind them.

X-Q. 63. I asked you if your recent thinking about these old cars since your brief talk with Mr. Heyser, had not had the effect of bringing them to a great extent back to your memory, to which your answer was "not a great extent." Did not your thinking in reference to them as stated to a considerable extent recall them to your mind?

2271 A. No; they were in my mind a long time before that.

X-Q. 64. Do you wish to be understood as testifying that your thinking about these old cars as you have stated since meeting Mr. Heyser has been entirely without effect in recalling them to your memory?

A. I do.

X-Q. 65. For what particular purpose were these bunks in the gentlemen's apartment intended; that is, for what class of travel?

2272 A. First for the through stage passengers, from Pittsburgh and the West, second, for way passengers between this and Pittsburgh; third, for any citizens of this town and vicinity that might want them.

X-Q. 66. Did not stage passengers at all times have the precedence in securing accommodations?

A. Yes, sir; so the conductor told me.

X-Q. 67. About how many times do you suppose you

were in these sleeping cars while they were running on the road?

A. Twenty or thirty times during four or five years. 2273

X-Q. 68. Were you subpoenaed to come here to-day or did you come voluntarily?

A. I was not subpoenaed; I came at the request of Mr. Munson.

RE-DIRECT EXAMINATION.

R-D-Q. 69. Am I right in understanding that when you first saw this sleeping car you carefully examined it and with great interest, I mean the way in which a section of gentlemen's berths was constructed and operated? 2274

A. Yes.

R-D-Q. 70. Have you any interest in the matter in controversy that may or can be affected by the giving of your testimony?

A. None at all.

JAMES C. AUSTIN.

Attest:

THOMSON H. PALMER,

Special Examiner.

2275

JUDGE FREDERICK WATTS, a witness produced on behalf of the defendants, having been duly sworn, testified as follows.

Q. 1. State your name, age, residence and profession?

A. Frederick Watts, age 80 years, residence Carlisle, Penn., and by profession a lawyer all my life, except while I was on the bench. 2276

Q. 2. Of what judicial district were you judge?

A. I was president judge of the 9th judicial district of Penn.

Q. 3. Were you not at one time president of the Cumberland Valley R. R.?

2277 A. Yes, sir, I was president of the Cumberland Valley R. R. from, I think, 1842 to 1872, thirty years. I was always connected with the road as director from its origin, and assisted to organize it.

Q. 4. Do you remember of any sleeping cars being put in use upon this railroad many years ago?

A. Yes. I remember in 1839 or '40 there was a sleeping car run upon this road, and there was another one subsequently obtained probably a year or two after.

Q. 5. When were these cars discontinued as sleeping cars?

2278 A. I can't remember exactly how long they were run. They were run from the time they were put on, until about 1848 or '49.

Q. 6. While they were in use upon this R. R. were you frequently in them, while they were running over the road?

A. I was, very often; being president of the road at that time I had occasion to pass over it very often, and often in these cars.

Q. 7. Did you ever lie down in them to rest while riding over the road?

2279 A. I have often laid down on the cushions in them. I don't remember to have slept in them at night.

Q. 8. Do you remember to have seen their berths occupied by persons resting in them at night?

A. Yes, sir, I have seen other persons sleep in them. I recollect that.

Q. 9. Will you please describe, in your own way, the construction and arrangement of the interior of these cars?

2280 A. There were two apartments in the car which had in them sleeping berths; there was another apartment which had seats at right angles with the side of the car; the formation of the berths in either of these apartments was first a seat, probably about 18 to 22 inches wide; the back of this seat was hung in some way the details of which I can't state, but it was hung upon a hinge, and when pulled out from the bottom, until it came up

to a level, it formed a second berth to sleep on. How it was kept in place I can't now state from memory, whether by bolts run into the partitions or hung by straps, I can't tell which it was; the third berth was drawn up near to the ceiling of the car that it might not interfere with persons sitting in the lower berth during the day; that berth was let down to a horizontal position so as to form a third berth. When it was up it stood at an angle; the front edge of it didn't go quite up to the roof of the car, it stood at an angle of about 45° when up. It was hinged at its back. 2281

Q. 10. These partitions you have spoken of, how high up did they go? 2282

A. My recollection is they went up to the roof of the car and down to the floor; they were at each end of the berth and extended as far out from the side of the car as far as the berths extended when in a horizontal position.

Q. 11. Do you remember of there being a cross partition with a door in it cutting off one end of the car, to form a ladies' apartment?

A. There was a ladies' apartment cut off, divided—that is the ladies' and gentlemen's apartments were separated, but whether by a partition or by a curtain I can't now say to my recollection. 2283

Q. 12. Were the berths along the sides of the car and along each side of the central aisle?

A. Yes, sir, the berths were on each side of a central aisle.

Q. 13. You have described a section or tier of berths three berths high with partitions at each end of them. How many such sections were there on each side of the car?

A. Two, one intended for ladies' and the other for gentlemen. 2284

Q. 14. Do you recollect how the upper berths were supported when let down to a horizontal position to be slept upon?

A. I have not a distinct recollection how those upper or third tier of berths were supported, but they

were fastened in some way to the partitions, whether they rested upon a cleat or fastened by a bolt or otherwise, I can't remember.

Q. 15. Do you remember pillows for the berths?

A. I do, distinctly. The pillows were round and the circular seam at each end was corded, and were kept up behind the upper berths in the day time.

Q. 16. Any bed clothing, as a blanket or comfort?

A. I have no recollection of any clothing whatever used.

Q. 17. Have you ever seen any model or other representation, illustrating these old cars?

A. No, I never have.

Q. 18. I now ask you to step into the next room with us and examine a model there which is entitled in this cause, and marked Defts. Exhibit, Chambersburg Car, and say how correctly it illustrates the sleeping cars you have testified to, as having been used upon the Cumberland Valley R. R.?

A. I recognize this as being a good likeness of the car which I remember, with the exception of this falling seat in the ladies' apartment of the car, which I don't remember at all. I do not intend to say that the car did not contain that, but I don't remember it. Upon looking at this model I remember that upper berth did rest on cleats nailed to the partitions.

Q. 19. Upon examining this model does it refresh your mind so, that you recall two sections of berths with partitions at their ends, and beyond them one end of the car cut off by a partition to form the ladies' apartment?

A. I do not remember the partition between the ladies' or gentlemen's apartment other than I know there was a partition, but whether it was of wood or was a curtain I do not now remember. I remember the wooden partition came out as far as the berths when in a horizontal position, but whether the wooden partition at the end of the berth next to the ladies' apartment was extended across the car by wood work with a door in it or by a curtain I do not remember.

Q. 20. I call your attention to short straps coming from the roof and fastening into the face of the upper berth to hold it in its raised inclined position ; is this strap fastening in the cars recalled to your mind by this model ? 2289

A. It does. I remember those straps being there to keep up that berth.

Q. 21. I also call your attention to the fact that this model shows long straps running from the roof and clasping over hooks on the edge of the upper berth when in its horizontal position, thus forming guards ; is this recalled by the model ?

A. I can't say that it is. I don't recall those straps put there as guards to keep people from falling out from the upper berths. 2290

Q. 22. Were the berths all cushioned in the car ?

A. They were, and they were covered by cloth or casimere, of the same general color as that in the model, but lighter.

CROSS-EXAMINATION BY MR. TOWLE.

X-Q. 23. How long has it been since you have actively followed your profession ? 2291

A. I came to the bar in 1824 and I have followed my profession constantly, with a very full practice, up to 1860, except when I was upon the bench, which was about three years. Since 1860 I have not been so actively engaged in my profession as before. I have since that been acting as a counsellor. I have not been in court much since 1860. In 1872 I was called to Washington by President Grant, as Commissioner of Agriculture. I was at Washington six years in that office. Since 1878, when I came back from Washington, I have been but a counsellor-at-law, whilst my son has been the practitioner in the office with me. 2292

X-Q. 24. Were you subpoenaed to come here to-day or did you come voluntarily ?

A. I was not subpoenaed to come here, but I came at the request of Mr. Munson. He came to Carlisle

yesterday to ask me to come here to-day, which I did at his instance.

2293 X-Q. 25. What is the distance from Chambersburg to Carlisle?

A. Thirty-three miles.

X-Q. 26. Have you of late been in the habit of coming to Chambersburg frequently?

A. As a director of this road I have been in the habit of coming to Chambersburg frequently, as much as once a month during the whole year.

2294 X-Q. 27. After these old sleeping cars were taken from the Cumberland Valley Road how long was it before your attention was especially called to them?

A. I think it is maybe two years ago when I first heard that there was a controversy involving the necessity of proving the existence of these cars. It may have been three years ago. When my attention was first called to them it was by a stranger, who called here to ask me what I remembered about these cars. Who that stranger was I can't now say, but he was evidently a person who was interested in the question.

2295 X-Q. 28. Did this party ask you if you remembered the construction and operation of the upper berths in these cars?

A. I think I gave him about the same information that I have given in this testimony. He asked me for information regarding the construction of these cars, and I gave him the same information which I have now given.

X-Q. 29. Previous to your being called on for the purpose of requesting your attendance as a witness have you ever had any conversation with any one except the party referred to about the construction of these old cars?

2296 A. I have no recollection of having any conversation with anybody except that person referred to, and who he was I don't know, until Mr. Munson asked me what my recollection was regarding it.

X-Q. 30. Since you were called upon, about two or three years ago, by this party whose name you do not

know, have you given much thought in reference to how these cars were constructed?

A. No ; I have not given much thought to it at any time either before or since. 2297

X-Q. 31. Did not the visit of this unknown party have the effect of directing your attention to a greater or less degree to these old cars?

A. Yes, it did.

X-Q. 32. Since that time have you anticipated being called as a witness in reference thereto?

A. After the conversation with that unknown gentleman, whoever he was, I supposed from the information I gave him I might at some time be called to testify about it. 2298

X-Q. 33. Please state how these cars were heated in the winter?

A. I have not any distinct recollection how the cars were heated?

X-Q. 34. What recollection have you as to the manner in which they were lighted at night?

A. I have no distinct recollection of how they were lighted.

X-Q. 35. You remember, as I understand you, that you rested yourself on one of the berths in the gentlemen's apartment; can you not recall to your memory that there was a stove standing in the aisle in this apartment of the car? 2299

A. I cannot.

X-Q. 36. Please give your best recollection as to the windows used for each tier of berths used in the gentlemen's apartment?

A. As I said before, this model represents, according to my recollection, the windows in the car.

X-Q. 37. Had you any distinct recollection in reference to the number of windows before you saw the model? 2300

A. No, sir; until I saw this model I never thought of the subject of the windows at all; but I believe they were just as represented here.

X-Q. 38. Do you remember of there being a water-closet in these cars?

2301 A. I do not.

X-Q. 39. Do you remember how the windows in the cars worked—that is, whether they raised up towards the roof or let down behind the seats of the cars?

A. My recollection is that they were let down into the body of the car behind the seats.

X-Q. 40. Did you or did you not understand that the upper berths were raised up during the day for the purpose of keeping them out of the way of the heads of passengers?

2302 A. There is no doubt about that. They were raised up to keep them out of the way of the heads of the passengers.

X-Q. 41. Can you not on a moment's reflection recall the use of bedding in these cars?

A. I cannot, any other bedding than the stuffed pillows and the cushions on the berths.

X-Q. 42. Do you remember whether the cushions on the lower seats were fast or loose?

A. I cannot tell whether it was loose or fast.

2303 X-Q. 43. Will you be so kind as to tell me your best recollection of the ladies' apartment previous to your looking at the model?

A. There was a seat on the side—no tiers of berths in that apartment.

X-Q. 44. For what particular purpose or use were these cars intended when they were put upon the road?

2304 A. At that time this road formed part of the traveling lines from Philadelphia to Pittsburg. The balance of the line from here to Pittsburg was by stages. Those stages came in here from Pittsburg in the night time. These cars were intended to accommodate the passengers who came in those stages at night. When the Pennsylvania R. R. was built it superseded this line for carrying passengers, and after that our cars all ran by daylight only, hence the sleeping-cars became useless as such.

X-Q. 45. Were these partitions between the tiers of berths straight on their front edges or scalloped as you remember them? 2305

A. I have no memory on that subject.

X-Q. 46. Please state whether you had any distinct recollection as to how the upper berths were held in position when horizontal, before you examined the model?

A. I had not until I examined the model, and I am now very certain that they were held up by cleats.

X-Q. 47. Was there anything separating the cross-seat portion of the car from the gentlemen's sleeping apartment except the partitions at the ends of the berths? 2306

A. My impression is that there was either a curtain or woodwork, but I do not remember which. That is, extending between the partitions at the end of the berths between the cross-seat portion of the car and the gentlemen's sleeping apartment; I have not a distinct recollection of it, but this is my impression.

X-Q. 48. Was any effort made to your knowledge to keep the cross-seat portion of the car quiet at night, while the adjoining apartment was being used for sleeping purposes? 2307

A. I have no recollection about that at all.

X-Q. 49. Is it or is it not a fact that these cars were looked upon as being intended for the accommodation of stage-coach passengers and not as sleeping-cars, using the term sleeping-car in its present well-known acceptance?

A. The cars were intended mainly for the use of stage-route passengers, but they were intended for sleeping cars for their accommodation. They were for the use of tired stage passengers as sleeping accommodations. 2308

RE-DIRECT EXAMINATION.

R-D-Q. 50. Were these sleeping-cars considered

comfortable accommodations for persons to rest in during a journey of four or five hours ?

2309

A. Certainly they were.

R-D-Q. 51. Have you any interest of any sort to be affected in any manner by giving your testimony here ?

A. I have neither any interest or feeling on the subject.

FREDERICK WATTS.

Attest :

THOMSON H. PALMER,

Special Examiner.

2310

Adjourned to October 27th, 1881, at 10 o'clock A. M., at the office of Munson & Philipp, 239 Broadway, New York, N. Y.

NEW YORK, Oct. 27, 1881.

Adjourned subject to notice.

2311

2312

2313

U. S. CIRCUIT COURT,

NORTHERN DISTRICT OF ILLINOIS.

GEO. M. PULLMAN AND PULLMAN'S
PALACE CAR CO.,

versus

THE N. Y. CENTRAL SLEEPING CAR
COMPANY, AND WEBSTER WAGNER.

In Equity.

2314

Further testimony taken on behalf of the defendants,
under the 67th Rule in Equity, as amended, before
Thomson H. Palmer, Special Examiner, pursuant to
notice.

CLEVELAND, OHIO, Nov. 15, 1881, }
10 o'clock, A. M.

2315

Met pursuant to notice.

Present.—C. K. OFFIELD, Esq., for compl'ts.

H. T. MUNSON, Esq., for Def'ts.

Adjourned to to-morrow, November 16,
1881, at 10 o'clock, A.M.

Cleveland, O., November 16th, 1881.

Met pursuant to adjournment.

2316

Counsel appearing as before.

Adjourned to to-morrow, November 17,
1881, at 10 o'clock, A.M.

Cleveland, O., November 17th, 1881.

2317

Met pursuant to adjournment.

Counsel appearing as before.

Adjourned to Monday, November 21,
1881, at 10 o'clock, A.M.

CLEVELAND, OHIO, }
November 21st, 1881. }

2318

Met pursuant to adjournment.

Counsel appearing as before.

DAVID R. WILSON, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows :

Q. 1. State your name, age, residence and occupation?

A. David R. Wilson ; age, 56 ; residence, Cleveland, Ohio, and occupation, car-builder.

2319 Q. 2. Did you ever work for Charles Wason, a car-builder, formerly doing business in Cleveland, Ohio, and if yea, please state when you entered his employ?

A. I did. I entered his employ in 1852, and stayed with him as long as he was in business here.

Q. 3. Who succeeded him in that business?

A. Morrill and Bowers.

Q. 4. Did you continue right on and work for the firm of Morrill and Bowers when they succeeded Wason?

A. I did.

2320 Q. 5. When did you leave their employ?

A. When they sold out in 1864 or '65.

Q. 6. Can you state the year when Morrill and Bowers succeeded Wason in business?

A. I think about '57.

Q. 7. Did you ever construct any sleeping cars while engaged with Morrill and Bowers?

2321

A. I did.

Q. 8. What name were the first one or ones that you constructed there, known by?

A. The Woodruff. There were two of them.

Q. 9. What year was this?

A. I think '58.

Q. 10. For whom were these Woodruff cars built, if you know?

A. For Herrick and Barlow, lawyers of Cleveland, Ohio.

Q. 11. How was the next car known, which you built, I mean by what name? 2322

A. Myers and Furniss, built in '58, I think.

Q. 12. For whom was it built?

A. I think they built it for themselves.

Q. 13. What was the next sleeping car which you built, and where did you build it?

A. One that I built for Gillette and Hathaway at Fort Wayne, Indiana.

Q. 14. When was that?

A. I think 1858, or early in 1859.

Q. 15. What was the next sleeping car which you built, where was it built and for whom? 2323

A. It was built for Gillette in the city of Cleveland, Ohio, in Morrill and Bowers' shops.

Q. 16. When?

A. I have thought previously that it was in '58, but I think it was in '59.

Q. 17. What makes you think now that it was in 1859?

A. Because I happened to find a bill among my papers which shows we were at work in Fort Wayne, late in '58, or early in '59, as the bill is dated January 13th, 1859, and I also found a contract with Gillette, dated Cleveland, November 25th, 1858, and these documents convince me that the second car was built in 1859. 2324

2325 Bill and contract filed in evidence and marked respectively Defendants' Exhibits, "Fort Wayne Bill," T. H. Palmer, Special Examiner, and "Gillette Contract." T. H. Palmer, Special Examiner.

Q. 18. Did these cars which you built, one at Fort Wayne and one at Morrill and Bowers' shops in Cleveland, go into use as sleeping cars upon any rail-road, and if so, on what one?

A. They did. They went on the Toledo, Wabash and Western R. R.

2326 Q. 19. Do you know how long they continued in use there?

A. I do not.

Q. 20. Between what points did the R. R. extend?

A. I think from Toledo, Ohio, to Lafayette, Indiana. It did not run East of Toledo.

Q. 21. Did you ever ride in either of these sleeping cars while they were running over the road as such?

A. I think I did. I know I rode in the last car, and I think I rode in the first.

2327 Q. 22. Were not all the sleeping cars built by you—I mean the Woodruff, Myers and Furniss, and the two Gillette cars, constructed by the fitting up of old car bodies with sleeping berths?

A. No. The Woodruff cars were constructed new, bodies and all, and the other cars named were ordinary passenger cars, fitted with berths.

Q. 23. Please describe the first car, built by you at Fort Wayne, Indiana, for use upon the Toledo, Wabash and Western R. R.?

2328 A. We took an ordinary passenger car and used the outside seat arm and seat frame, we then took the cushion seat and cushion back and hinged them together. This cushion back was held in place by a stretcher from seat to back. This stretcher was secured to the seat by a pivot and slid in the back in a groove, so that the back and seat might lie down horizontally. One end of the stretcher was fastened

in the seat end by a pivot, so that you could swing it on the pivot; a casting with a slot in it was on the edge of the back that this stretcher was attached to by a rivet that would slide in that groove with a slot in that groove to hold the back in position. The head on the rivet kept the stretcher from being disengaged from the groove. When the seats and backs were down flat, they were held by bolts that went into the seat arm and into the side of the car. There was a partition hung by hinges between the bolts, so that it could be opened, to form a partition between the berths that the seats made. This partition swung on hinges like a door; it came from under the windows and swung on hinges like a door at right angles to the side of the car. 2329 2330

Q. 24. Were there any upper berths in this car, and if so how were they made?

A. There was. They were two frames each the length of the sections and one-half of the berth in width, making two frames in each upper berth, and were hinged together in the centre and supported on the inner or car side edge by three straps extending from the top of the car to the bottom of the back edge of the berth frame nearest the car wall. This inner edge of the upper berth was fastened to the wall of the car by toes and sockets, one at each end. The front edge of the outer frame of the berth was supported by two bars, one at each end, extending from the roof of the car and fastened onto the aisle edge of the upper berth by an eye in the berth frame, into which they hooked. There was a partition to divide the upper berths that let in between the window posts and could be extended out at right angles from the side of the car, so as to form a partition between the upper berths. It was made like the box of a house window and the inside shutters that fold up into that box. 2331 2332

Q. 25. What was done with the upper berths in the day time?

A. They unhooked the front bars and hooked them up against the roof, and then rolled up the berths until the

two frames came back to back and then swung them up to the roof of the car with the straps around them. 2333 These straps held the frames folded together and kept the cushions upon them. The doubled frames and cushions were held up against or near to the roof of the car either by springs or straps, I don't remember which.

Q. 26. When the upper berth was horizontal, to be slept on, was there anything to keep the cushions from sliding off?

A. There was. There was a ledge around the frame.

Q. 27. Am I right in understanding that this was the 2334 arrangement of a number of sections of berths along each side of the car, with a central aisle or passageway between them?

A. Yes.

Q. 28. When the car was arranged for day use were the upper berths rolled up to the roof of the car, the partitions closed back against the side of the car, and the backs raised up and supported at about right angles to the seats?

A. They were.

Q. 29. Did this leave a clear, unobstructed space 2335 throughout the car like an ordinary passenger car?

A. It did.

Q. 30. Have you not recently looked for and found patterns for castings belonging to this Fort Wayne car?

A. I have.

Q. 31. Will you please produce them?

A. I will and do.

Q. 32. Please look at the pattern now handed you and say if you know what it is?

A. I do. It is the pattern of the casting having a toe that was placed in the bottom of the back frame of 2336 the upper berths near the wall edge.

Pattern referred to filed in evidence on behalf of the defendants and marked Defendants' Exhibit Wilson Pattern No. 1,

Fort Wayne Car. T. H. Palmer, Special Examiner.

2337

Q. 33. Please answer the same question as to the pattern now handed you?

A. It is the pattern of the casting having a socket that was screwed in the side of the car to receive the toe from the casting on the berth frame.

Pattern referred to filed in evidence on behalf of the defendants and marked Defendants' Exhibit Wilson Pattern No. 2, Fort Wayne Car. T. H. Palmer, Special Examiner.

2338

Q. 34. Please answer the same question as to the pattern now handed you?

A. It is a pattern of the casting that was placed in the front or aisle edge of the inner platform of the upper berth, which carried the eye into which the suspending arm was hooked.

Pattern referred to filed in evidence on behalf of the defendants and the same is marked Defendants' Exhibit Wilson Pattern No. 3, Fort Wayne Car. T. H. Palmer, Special Examiner.

2339

Q. 35. What kind of hinges did you use to connect the two frames of the upper berths together?

A. Strap hinges.

Q. 36. The shanks of strap hinges are quite long and taper toward their extremities, do they not?

A. They do, and these hinges extended nearly across the berth frame. I used three of them to a berth.

2340

Q. 37. Where did you find these patterns?

A. At home at my house, among a lot of traps.

Q. 38. Did you know that you had them until you made a search within a week, at my request, and found them?

A. I did not.

2341 Q. 39. Have you seen the car you built at Fort Wayne, or any part of it, since you built it, or possibly rode in it many years ago?

A. No, sir.

Q. 40. In this Fort Wayne car, could the seats be faced all in one direction and in either direction like an ordinary passenger car?

A. I rather think they could be; to the best of my recollection they could be.

2342 Q. 41. Where did the car body come from which you fitted up with sleeping berths at Morrill & Bowers', in 1859, at Cleveland, Ohio, for Gillette, which went into use on the Toledo, Wabash & Western R.R.?

A. Came from that railroad. Its seats were all out when it arrived.

Adjourned to 10 o'clock A. M. to-morrow, Nov. 22d, 1881.

CLEVELAND, OHIO,	}
Nov. 22, 1881.	
10 o'clock A. M.	

2343

Met pursuant to adjournment.

Counsel appearing as before.

DAVID R. WILSON—Examination continued.

Q. 42. Please describe the sleeping-car you built at Morrill & Bowers' shops in Cleveland, and which was used on the Toledo, Wabash & Western R. R.?

2344 A. It was built with backs facing each other, so that the seats sat face to face, and their backs were about six feet apart. The seats and backs were hinged together. They were framed and upholstered in two different pieces. Each seat and back was a separate frame upholstered, and the two were hinged together so that they could be arranged into berths for sleeping

purposes. The backs of the two adjoining seats set back to back with a seat arm and a stationary partition. These stationary partitions were made hollow so as to receive a sliding partition. These partitions extended from the floor up a little above the window sill. To the bottom of these stationary partitions there were boxes to contain the bed clothing, which were covered through the day by the seats. In arranging the seats and backs for sleeping purposes the seats were drawn together, the back then occupying the place of the seat. There was an iron swing bar that extended from the one seat to the other to support the inner or aisle edge. The wall edge was supported by the truss-plank. In these stationary partitions I had a sliding partition that was capable of being raised up to within about five inches of the inside edge of the roof. I had a movable piece formed with rails. The bottom edge was grooved to fit the upper edge of the partition, which was then held in its place on the top edge by a spring and stop. I also had another solid movable piece that was grooved in the same manner on its bottom edge and held the same as I held the other one. I had also rods hung from the roof. These rods were put there to hang curtains on when these movable pieces were not in place, so as to fill up the space between the sliding partition and the roof.

When the sliding-partitions that came out of the seat-backs were raised up, they were held near their lower edges by two thumb springs, and on their upper edge by a socket fastened to the side of the car. The upper berths were framed the full length of the lower section, each frame being one-half the width of the section. These frames were hinged together in the center by three strap hinges. These frames had a ledge around them to contain the cushions. The platform next to the wall of the car was fastened by three straps extending from the top of the car to the under edge of the platform next to the side of the car. These platforms were fastened on the edge next the wall by a socket fastened to the under edge of the platform and by a toe

2349 that was fastened to the wall of the car. The aisle edge was supported by two movable iron arms that went into sockets in the seat arms and acted like legs supporting the upper berths. The upper berth was thus held in place horizontally for sleeping purposes.

To get this upper berth out of the way in the day-time, we took these legs out of the sockets, and swung them up against the edge of the berth where there were little catches to receive them. We then pressed the platforms together until their backs met, and the cushion of the back platform was against the side of the car. In making this movement it drew the back platform off from the toes and left the two hung by the straps and standing against the side of the car. We then swung them bodily up to the roof of the car on the straps, where they were kept in their places by straps suspended from the roof and fastened to the outer edge of the lower platform.

2351 The sliding partitions were then let down into the hollow seat backs. To unmake the lower berth or arrange the seats for day use; I lifted up the back, placed the clothing in the boxes and pushed my bottom seat back into its proper place; then I swung my iron bridge arm into its proper place under the seat and then placed the other seat in its position. The car then left an unobstructed view from one end of the car to the other over the seats.

Q. 43. What you have described is one section containing an upper and a lower berth. Were there several such sections along each side of the car with a central aisle or passageway between them?

A. There was.

2352 Q. 44. I understand from your testimony that the seat frames in this car were arranged transversely and back to back, and were stationary, so that two seats faced each other with a foot space between them; was that so?

A. The seats—I mean the seat cushions—were not stationary; they were movable. The seat frame as a whole was stationary. The seat back support was

built stationary and extended from the side of the car to the seat arms.

Q. 45. Did two seat and back cushions supported upon these frames face each other with a foot or leg space between them? 2353

A. They did.

Q. 46. Do you mean that the backs of two facing seats, or the back supports, were about six feet apart?

A. The back supports.

Q. 47. Do you mean that the stationary seat-back supports or stationary partitions, as you have called them, belonging to two abutting seat frames, were set apart so as to make a hollow to receive the sliding diaphragm or partition? 2354

A. They were.

Q. 48. When the sliding partitions or diaphragms which were each contained in the space between the backs or partitions of the seat-frames were raised up vertically and supported by the thumb-springs and the sockets you have described, reaching at the side of the car within about five inches of the roof, what was their purpose with reference to the upper berths?

A. To make a partition between the upper berths.

Q. 49. When these sliding partitions or diaphragms were thus raised up did they operate to complete the partitions between adjoining lower berths, and also operate by projecting above the upper berths to form the head or foot board between adjoining upper berths? 2355

A. They did.

Q. 50. Then from your testimony I understand that when the berths were made up to sleep on, the stationary partition or seat-back supports and the sliding partitions or diaphragms, raised above them, together formed a partition between adjoining lower and upper berths that extended from the side of the car outward as far as the berths did, and upward nearly to the roof of the car; is that right? 2356

A. That is right.

Q. 51. You speak of boxes in connection with the seats ; where were these boxes ?

2357 A. They enclosed the space under the seats within the seat frames.

Q. 52. Then in the day use they would be covered by the seat cushions and in the night use by the back cushions, is that not so ?

A. That is so.

Q. 53. From your description I understand that each seat and back was hinged together but disconnected from the seat frame, so that while the seat and back would bend with respect to each other so as to operate as a seat and back, they could also be bent down so as to lie horizontally and form a bed extending between the back supports or stationary partitions of two facing seats ; is that correct ?

A. Yes.

Q. 54. When arranged to sleep on did the back cushion rest horizontally on the seat frame and was the seat cushion extended over the foot space to meet the opposite seat cushion ?

A. Yes, sir.

Q. 55. This is the car I understand you to say you saw in use on the road after you built it ; is that so ?

A. Yes.

Q. 56. To what was the spring and stop fastened that you put on to hold the solid movable piece and the post and rail movable piece in this car ?

A. To a strap fastened to the roof and running lengthways of the car.

Q. 57. How wide was the upper berth and the lower berth ?

A. About three foot two or three foot three.

2360 Q. 58. What was the purpose of the ledge around the platforms of the upper berths ?

A. To keep the cushions in their places

Q. 59. Why did you not build the second car for use on the Toledo, Wabash and Western R. R. at the Fort Wayne shops where you built the first one ?

A. Because they had not facilities there for building it as well as they had here.

Q. 60. When you recently made a search for patterns did you find any used in connection with this car you have described as built by you at Merrill and Bowers' shop; if so please produce them? 2361

A. I did, and I now produce them.

Q. 61. Please look at the pattern now handed you and say if you know what it is?

A. I do, it is a pattern in two pieces for the toe that was screwed into the wall of the car to receive the socket on the bottom edge of the upper berths.

Pattern referred to filed in evidence on behalf of the defendants and marked Defendants' Exhibit, Wilson Pattern No. 4. T. H. Palmer, Special Exr. 2362

Q. 62. Where is the pattern for the socket plate that is worked in connection with this Exhibit Pattern No. 4.?

A. I don't know, I couldn't find that.

Q. 63. Please look at the right and left patterns now handed you and say what they were for? 2363

A. They were for the sockets screwed onto the seat arms to receive the ends of the legs of the upper berths; their core box I could not find.

The two patterns referred to are filed in evidence on behalf of the defendants and marked respectively Defts' Exhibits Wilson Patterns Nos. 5 and 6. T. H. Palmer, Special Exr.

Q. 64. Please look at the pattern now shown to you and say what it is? 2364

A. It is a pattern for the socket screwed into the side of the car to hold the sliding partition in place when it is raised up.

2365 Pattern referred to filed in evidence on behalf of the defendants and marked Defts., Exhibit Wilson Pattern No. 7. T. H. Palmer, Special Exr.

Q 65. Where is the pattern of the castings that were fastened to the front edge of the aisle platform of the upper berth to receive the pivot of the legs?

A. The Wilson Pattern No. 3 is the one. The same pattern which I used to hold the eye in the Fort Wayne car I used to hold the pivot in the Cleveland car.

2366 Q. 66. Please look at the model I now show you, examine the same and say whether it is alike in its construction to that of any sleeping car constructed by you?

2367 A. It is substantially like one section of the sleeping car that I built for Gillette at Morrill and Bowers' shops in Cleveland, Ohio, in 1859, for use on the Toledo, Wabash and Western R. R. But in the car itself the stationary partitions forming the back supports of the seats came up higher than they are represented in this model; the sliding partitions were a little longer than they are represented in this model, and they came up nearer the roof than they are shown in this model, those are all the differences I can see between the model and the car.

Q. 67. The post and rail construction of detached movable piece which I now show you, and which you have described as having been made to rest on top of the sliding partitions when they were fixed in their highest position; was the car fitted up with these devices when it went out of the works where you built it?

2368 A. They were made for the car, but didn't go out with the car.

RECESS.

Q. 68. Please look at the solid panel movable piece

belonging to this model and state whether or not it ever went out into public use with the car?

A. It did not; after I got them in their place they worked all right, but I didn't like them. They were removable pieces and attached to nothing I thought that they might be lost and I placed curtains in their stead. 2369

Q. 69. Then when the car was fitted up with these panelled movable pieces they took the place of the post and rail kind, did they?

A. They did.

Q. 70. And these panelled movable pieces with which you fitted up this car were supported, as I understand you, by their grooved bottoms resting on the top rail of the sliding partitions when they were in their highest place and sustained by the spring and stop on the longitudinal strip of the roof? 2370

A. Yes, sir.

Q. 71. And when so placed worked perfectly and were only removed because they were detached pieces, and you thought they would be lost or troublesome to take care of; is that so?

A. Yes; and the sliding partitions went so near to the roof of the car that I did not think they were really needed. I put them in to make a complete vertical separation between the sections. 2371

Q. 72. The curtain that you hung on a rod to take their place; how long was it up and down?

A. About five inches at the back end and a little longer at the front end.

Q. 73. Did this short curtain hang permanently?

A. No; it was on a rod so that you could shove it back to the side of the car when the upper berth was turned up and the car arranged for day use.

Q. 74. Then I understand it hung on a rod arranged near the roof and projecting at right angles to the side of the car? 2372

A. That is so. The rod came out and intersected with the front rod. The front rod extended longitudinally from one end of the car to the other, on

which the curtains that covered the outside were hung.

2373 Q. 75. Was the bridge rod to support the front or the aisle sides of the seat cushions pivoted to swing as in this model?

A. It was hung the same as in the model.

Model referred to filed in evidence on behalf of the defendants and the same is marked Defendants' Exhibit Toledo Car. Thomson H. Palmer, Special Examiner.

2374 Q. 76. Did you have a model of the car you afterwards built at Fort Wayne, and of the car you afterwards built at Morrill & Bowers' shops at the time you were first approached by Hathaway concerning the building of sleeping cars?

A. I did.

Q. 77. Why did he select the one for turning parts of a common day seat into sleeping berths?

A. Because it was cheapest.

2375 Q. 78. And was it because the car that you finally built at Morrill & Bowers', Cleveland, required the entire construction of the berth sections, including seats, that you insisted upon doing the work at Cleveland, as you have stated, where you would have proper facilities?

A. Yes.

Q. 79. Was the upper berth as well as the lower berth in both cars you built for Gillette or Gillette and Hathaway intended to accommodate two persons?

A. Yes, they were both double berths.

Q. 80. Do you know how the car that you built in Cleveland went to Toledo, when it was done?

2376 A. It went from our shop on the Pittsburg & Cleveland R.R., whose tracks intersected with the road that went to Toledo.

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 81. What time in the year 1859 did you build

for Mr. Gillette at the works of Morrill & Bowers, Cleveland, the sleeping-car which you swear is correctly represented as to one section by Defendants' Exhibit Toledo Car? 2377

A. I think in the spring.

X-Q. 82. How long did it take you to build that car?

A. I have kept no time of that, but judging from other cars it may have taken us from the time we commenced it until we ran it out, two months.

X-Q. 83. How long was the body of the passenger car which you converted into a sleeper for Gillette in the year 1859? 2378

A. I can't tell, unless I could tell about the length of car, we built then, that is all I could tell. I think about a forty-two foot car, that is about the average length of passenger cars we built then. That is only a guess.

X-Q. 84. How high was that car at its inner or wall sides?

A. The posts, I should think, were about six feet, that is between the shoulders of the tennons

X-Q. 85. How wide was the car, inside measure?

A. I have got to guess at that—eight foot four inches to eight foot six. 2379

X-Q. 86. Did the car have a raised deck or roof?

A. No, sir.

X-Q. 87. How high was it in the centre?

A. That I have got to guess at. I will give our average. The sweep in the bows was from four to five inches.

X-Q. 88. You are perfectly confident, ain't you, that there was a movable partition which dropped down between the backs of the seats in that Cleveland Gillette car, and which could be raised up high enough to pass above the upper berth when that berth was in position for sleeping purposes? 2380

A. They came up to within four or five inches of the roof at the wall side of the car. They dropped

A. No, because the patent was scratched out. It was scratched out before it was signed. It was written by Mr. Geo. Morrill, if I recollect right. The car I built for Gillette was entirely different from the one I applied for a patent for. 2385

X-Q. 94. Describe the arrangements of the berths and partitions of the car upon which you applied for a patent?

Objected to as incompetent, irrelevant, and immaterial.

A. There were stationary partitions in that car. From the sill of the window out to the seat-arm, they extended to the aisle, and from the center of the partition to the roof. The two upper berths were single berths. The bottom berth was a double one. The upper berths were hung by straps at the wall side of the car. The front part was kept into its place by a bolt on the edge of the berth at each end going into the partitions. One of these single berths was above the other. It took one turn of the straps of the uppermost berth to put it in its place under the roof, and it took two turns of the straps of the lowermost berth to put it up under the roof below the upper berth. The lower berths were two different frames, the back and seat hinged together with a leg under the front edge of the seat, so that when these two opposite seats were drawn together they were supported by the leg on the aisle side, and by the truss-plank on the inner or wall side. 2386 2387

X-Q. 95. As I understand you, the sleeping-car which you fixed up for Gillette and Hathaway at Fort Wayne, you never saw after it left the shop, and don't know what became of it? 2388

A. I do know what became of it. I know it ran on the Toledo, Wabash & Western R. R. I was over the road and I must have seen it, but I don't remember.

X-Q. 96. How long was it after the sleeping-car which you fixed up for Gillette at Morrill & Bowers'

shop, left the shop before you saw that sleeping-car again?

2389 A. I don't think it was half an hour. I saw it down at the Junction. After it left Cleveland I think it might have been three to six weeks.

X-Q. 97. How many times did you see that Morrill & Bowers Gillette car after it left Cleveland?

A. I might have seen it from four to six different times.

X-Q. 98. How many times did you see the inside of it after it left Cleveland, or ride in it?

2390 A. I think I seen it inside every time. The riding, I don't know about that, I won't say.

X-Q. 99. Did you ever ride in it after it left Cleveland, and between what points?

A. Yes, between Toledo and Fort Wayne.

X-Q. 100. Day time or night?

A. I don't know whether it was day time or night.

X-Q. 101. Did you ever ride in that car in the night time, the one built at Cleveland for Gillette?

A. Yes.

X-Q. 102. Which berth did you sleep in?

A. I can't tell.

2391 X-Q. 103. Did you sleep in any berth?

A. I must have, being on the car.

X-Q. 104. Did you pay anything for sleeping in it?

A. I rather think I did.

X-Q. 105. How long after that car was built did you sleep in it and pay for it?

A. Within six weeks after it left the shop

X-Q. 106. Who was conductor on that car?

A. I think a man by the name of Allen at that time.

2392

Adjourned to to-morrow Nov. 23, 1881,
at 9 o'clock A. M.

CLEVELAND, OHIO, }
Nov. 23, 1881—9 o'clock A. M. }

Met pursuant to adjournment

Counsel appearing as before.

2393

DAVID R. WILSON'S cross-examination continued.

X-Q. 107. How long to your knowledge did that Morrill & Bowers car, like this model, run on the Toledo, Wabash & Western Road?

A. Gillette, the man that owned the car, sold out about a year after. The car was running then.

X-Q. 108. What was the size of the windows of that car like the model?

2394

A. I will give it as near as I can, about twenty-seven by twenty—the lights. They were double lights—all cars were made that way at that time. One light was about two-thirds of the height and the other was about one-third. They were both the same width.

X-Q. 109. How far apart were these windows?

Objected to as incompetent, immaterial and irrelevant.

A. I should say the panels between the windows would be from eight to ten inches. 2395

X-Q. 110. Before that car was altered to a sleeping-car, and while it was a passenger car, there was a window to each seat in the passenger car, was there not, the same as the passenger cars of to-day?

A. There was not and there ain't to the passenger cars of to-day.

X-Q. 111. How far were the end windows on the sides of the car from the ends of the car in that sleeping car like the model?

2396

Same objection.

A. That I couldn't answer exactly, because there was always a greater space between the end and the first window, and that space would be controlled by

the way we laid out our car. The space might have been twelve or fifteen inches, I can't tell.

2397 X-Q. 112. What became of that car like the model?

A. I couldn't tell.

X-Q. 113. This short curtain which you sent out with the car to form a complete separation between the upper berths instead of the two kinds of removable pieces accompanying this model, as I understand you, hung down from a rod placed directly over your sliding partitions, is that so?

A. About there, yes.

2398 X-Q. 114. How far was this rod placed below the roof of the car?

A. There was about room for the rings of the curtain to slide on.

X-Q. 115. How far down did the rod hang from the roof of the car which supported the curtains in front of the berths?

A. About the same as they did on the side, so that we could hang our curtains onto them.

X-Q. 116. How far down did this strip hang which is represented in the model with its attached fringe, above the center of the upper berth?

2399 A. Well as near as I can remember I should say that strip was an inch and a half to an inch and three quarters thick.

X-Q. 117. The rod upon which the curtains dividing the upper berths, were hung passed below that strip, didn't it?

A. I think so.

X-Q. 118. Calling your attention to the cap piece on top of the sliding board in your model, how thick was that cap piece on the car which this model professes to represent?

2400 A. The piece on the top of the panel was, I think, perhaps, an inch in thickness.

X-Q. 119. You have, as I understand you, done a good deal of guess work in this testimony, as to construction and dimensions of the various parts of the car like this model. Is not it a fact also that you

have done some very rough guessing as to the distance which this sliding board projected above the top of the fixed partitions when in position for night use? 2401

A. It is not.

X-Q. 120. You are willing to swear positively, are you, that this sliding board projected above the top of the upper berth when that berth was in its down position and the sliding board raised to its full height?

A. Yes, sir.

X-Q. 121. Didn't you have those dropping down curtains from between the upper berths made long enough, so that they could pass down to the tops of the fixed partitions and be used instead of your sliding board? 2402

A. Them upper curtains was merely a fringe dropping down there and came nowhere near the fixed partitions. I may also add that they were merely a fringe to hide the ends of the berths when they were up and take the place of those removable pieces.

X-Q. 122. You have sworn positively that those transverse curtains were hung by rings and rods, and that when the berths were up against the top of the car those curtains were pushed back on the rods to the side of the car. You now swear that they were simply a fringe to hide the ends of the berths. Will you please explain to the court which of these two statements is the truth, if either of them? 2403

A. I think they are both the truth, I meant to describe these both the same, and I do yet; the curtain hung on a rod with a fringe at the bottom of the curtain to fill up the vacancy between the movable panel and the roof, and while these berths were placed up against the roof, these curtains were slid back so as to form a fringe between the upper berths. 2404

X-Q. 123. How large were the rods upon which these dividing curtains were hung?

A. I couldn't exactly say. They were light rods, they might have been three eights of an inch or a half,

they were light rods ; they hadn't much weight to hold.

2405 X-Q. 124. They were the same size as the rods in front of the berths, wasn't they ?

A. Well, they might and they might not. I would rather think that the rods running through the car were a little the heaviest.

X-Q. 125. How were these curtains which hung down in front of the berths fastened to the rods at the tops ?

A. I think they were fastened by hooks.

X-Q. 126. They could be removed, couldn't they, and taken away ?

2406 A. Yes.

X-Q. 127. You are the same David R. Wilson who made an affidavit last fall in the case of the Pullman Palace Car Co., et al, versus The Baltimore and Ohio R. R. Co. ?

A. Yes.

X-Q. 128. You made a model at that time which you swore represented the car built at Morrill and Bowers' shop for Gillette, did you not ?

2407 A. I did not make that model, but I identified it as being just the same as one section of that car ; as near as I can recollect I think it was about the same.

X-Q. 129. In the affidavit that you made at that time, you identified the model as being the same as one section of this car you have testified about, and you swore that the "model was an exact and correct representation of the full sized car, except that in the model the means for holding the folded upper berth is a strap and button instead of the spring catches." You swore in that exact language, did you not ?

2408 A. I did, but since that I have found some patterns which shows me that the fastenings to the side of the car and berths were not just as represented in that model.

X-Q. 130. You swore in that affidavit, did you not, that the separate removable pieces or partitions between the upper berths were placed in the car and

that the car was run for many years for profit on the Toledo, Wabash & Western R.R. after the year 1858? 2409

Objected to as misleading and deceptive, in that it assumes that the witness stated in his affidavit that the car was run with these removable pieces in it, the fact being that that affidavit states, in substance, that the car as built by him was provided with these removable pieces which in the "day form" of the car "were taken down and laid upon the top of the cushion * * of the upper berth." There is no statement in the affidavit that the car run with these partitions in it, and the witness has now sworn that it did not. 2410

A. If I did it was a mistake. I don't think I did.

X-Q. 131. In the model which you swore to in the Baltimore case there was none of this dropping down ledge and fringe to it as shown in this model, was there?

A. I think there was. If there was not there ought to have been. I am pretty certain the ledge was there. The ledge was there. 2411

X-Q. 132. During the whole of the time that you have given your testimony, both direct and cross, the model has been before you, and before you have answered your questions as to the construction of the old sleeping car built for Gillette at Morrill & Bowers' you have looked at the model, have you not?

A. The model has been standing in the room, but I have not looked at it to answer the questions?

X-Q. 133. The model has been all the time directly in front of you, has it not, and you have frequently attempted to answer a question as to the construction of the old car by pointing out and illustrating its construction by this model, haven't you? 2412

2413

Question objected to as misrepresenting the facts, which are that this model stood and stands about twelve feet from the witness, and during his direct examination at one side, that the attempts of the witness to illustrate by that model during his direct examination were two, and referred to the Fort Wayne car.

2414

Complainants' counsel objects to the objection, for the reason that the model has been in plain sight of the witness, raised up in a position four feet from the floor, and it is the belief of complainants' counsel that the witness has not answered a question concerning the construction of this old Morrill & Bowers' car without looking at the model.

2415

A. I attempted twice, but was not allowed to do so, and in answering the questions I have answered the same whether the model had been there or not. I have never looked at the model to prompt me in my answers or to assist me.

X-Q. 134. You have been in the employment and pay of the defendants in this case for several years, have you not?

Objected to as a gross assumption and as incompetent, irrelevant and immaterial.

2416

A. I have not. I never knew I was in their employment or their pay. This is the first time I ever heard of it.

X-Q. 135. You swear positively, do you not, that the defendants in this case have never employed you for any purpose in connection with those old sleeping cars?

A. No, I don't think they ever did. I know they

never did. The first that I knew of this case I was called on by Mr. M. B. Philipp, I think in 1876, and requested by him to inform him of anything I might know of sleeping cars. I showed him some old models that I had, told him what I knew about sleeping cars. I also went around with Mr. Philipp and introduced him to some of the parties that had been working on the cars. I then sent him some models on to New York, and from that time until last fall I heard nothing and did nothing about sleeping cars, until last fall when upon telegraph from Mr. Philipp, I went on to New York to give my affidavit in the Baltimore case. 2417

X-Q. 136. You had a model or made a model several years ago to represent the car you built for Gillette at Morrill & Bowers' shops, did you not? 2418

A. I had.

X-Q. 137. Where is that model?

A. I gave the original model, which I had when I built the car, to my grandchild a good many years ago, about ten years ago—to play with, and it was destroyed.

X-Q. 136. That model was just like this one before you, wasn't it, as to manner of construction?

A. Yes, the general construction was the same. 2419

X-Q. 137. You made a model five or six years ago which you then pretended or stated at that time that it represented one section of the old Gillette sleeping car built at Cleveland, did you not?

A. I made a model for Mr. Philipp in '76, I think, that was the same as one section of the Gillette Cleveland car.

X-Q. 138. Where is that model?

A. I don't know where it is. I sent it to Munson & Philipp at New York.

X-Q. 139. You were a common house carpenter at the time you worked on that sleeping car for Gillette at Morrill & Bowers' shops in Cleveland, were you not? 2420

A. I was superintendent of the passenger car shops in Morrill & Bowers' shops at that time.

X-Q. 140. But you were a house carpenter, were you not?

2421 A. At that time, no. I was a car builder at that time, and for years before that.

X-Q. 141. You know Patrick J. Watson of this city, do you not?

A. I know a Patrick Watson, whether his name is J. or not I wouldn't be positive.

X-Q. 142. You have had several conversations with him concerning the construction of the car built for Gillette at Morrill and Bowers', have you not?

2422 A. I don't think I have, I may have spoken to him, but I don't think I did about the construction of the car.

X-Q. 143. You stated to him at one time, did you not, that you had received a considerable sum of money from the defendants for something you had done for them, and that if your services proved valuable you were going to make a good thing out of it, or substantially to that effect, did you not?

2423
Objected to as incompetent, irrelevant and immaterial, as insulting to the witness, and as a gross attack upon the integrity of the counsel for the defendants, who have been shown by the testimony to have conducted all transactions with this witness concerning this and the Baltimore suits.

A. I did not.

2424 X-Q. 144. You showed Mr. Watson a letter once together with two checks of \$125.00 each, which you said you had received, and you then stated that you were to make a good thing out of it if everything came out right, this being about three years ago. Mr. Watson so swore in an affidavit in the Baltimore case. Do you now deny that you showed such a letter, exhibited such checks and made such statement?

Same objection.

A. I am very sorry I couldn't show the checks, because I never had such checks, and could not have showed them, and I never made such a statement. 2425

X-Q. 145. Have you been subpoenaed to come up here and testify in this case or did you come voluntarily?

A. I was asked by Mr. Munson whether it would be necessary to subpoena me or not, he said if it was necessary to subpoena me he would. I told him it would not be necessary.

X-Q. 146. And you came voluntarily?

A. Mr. Munson said I would have to come anyway. I did not want to come; I told Mr. Munson I would rather attend to my business. 2426

X-Q. 147. But you did come voluntarily?

A. As stated, I did.

X-Q. 148. Did you or did you not come here voluntarily of your own accord without a subpoena?

A. I couldn't answer it any different from what I have answered it.

X-Q. 149. You have visited a number of different parties, have you not, in behalf of these defendants to get affidavits out of them as to the construction of the Morrill and Bowers' Gillette sleeping car? 2427

A. Yes, I have called on some of them that worked for me at that time, to ask them what they remembered about that Gillette car.

X-Q. 150. You did that voluntarily, didn't you?

A. Yes, but I expected to be paid for my time, and done this at the request of Mr. Munson.

X-Q. 151. You have expected for a long time to go on the stand and give your testimony in this case, as requested by defendants' counsel, haven't you?

A. I supposed when I returned from New York last fall, by seeing an article in the paper, that the case was settled, and thought no more about it until I saw Mr. Munson the other day. 2428

X-Q. 152. And you didn't come up here voluntarily to give this testimony, did you?

A. I have answered that before that I did not. If I had not have come Mr. Munson said he would subpoena me.

2429

X-Q. 153. When you first began to talk with parties who assisted in building the old Gillette sleeping car you tried to make those parties believe that the upper berths of the old Gillette car were like the upper berths of the Wagner sleeping cars that ran on the Lake Shore Road through this city, did you not?

A. I could not, for I don't know what the Wagner upper berth is to-day.

2430

X-Q. 154. Did you not try to get several of the parties who worked on the Gillette car at Morrill & Bowers' to go down to the depot of the Michigan Southern and Lake Shore in this city and examine a Wagner sleeping car, and see if the upper berth in that car wasn't substantially the same as the upper berth in the old Gillette car?

A. I never did.

X-Q. 155. Have you ever attempted to sell out any information you profess to have to the complainants in this case concerning old sleeping cars?

A. I have not.

2431

X-Q. 156. Who were the parties who assisted in the building of the old Morrill & Bowers' Gillette sleeping car which you say is represented by this model?

A. Zimmerman worked on it for one at that time, and a man by the name of Heidenrich, and one by the name of Weiners, and a person by the name of La Bar. There was others, but I can't recall them.

X-Q. 157. You know Frank Blum, don't you?

A. I do.

X-Q. 158. He worked on that car, didn't he?

2432

A. I had an idea that he did; but since seeing the man that he was employed by I rather think he did not.

X-Q. 159. Mr. Watson worked on that car, the gentleman whom I enquired about a few moments ago, did he not?

A. I believe he painted it.

X-Q. 160. Zimmermann done no work except on the outside of that car, did he?

A. There was no wood work done on the outside that I know of, and what he done was on the inside. 2433

RE-DIRECT EXAMINATION BY MR. MUNSON.

R-D-Q. 161. Won't you please explain your answer to X question No. 110, about the relation of the windows to the cross seats, and state if it was not the common mode in 1858 and '59, in cross seat cars to provide a seat for each window on the side?

A. On the side it was, the end seats had two windows, one in the end of the car and one in the side. These end seats were stationary. 2434

RECESS.

R-D-Q. 162. You said, speaking of the height of the car, that you should think its posts were about six feet between the shoulders of the tennons; does that give the height of the car from floor to roof inside at the wall?

A. No, sir.

R-D-Q. 163. What else was there there to add to the height? 2435

A. The plate of the car.

R-D-Q. 164. What is the plate; please describe it?

A. It is a piece of wood, its thickness being the width of the post, its height being five or six inches, adding just that much to the height of the car.

R-D-Q. 165. In the car built at Morrill and Bowers', represented by Exhibit Toledo Car, were the berths arranged so as to extend from about the center between every second window panel, as shown by the model? 2436

A. They were.

R-D-Q. 166. With whom have you had all your dealings concerning this suit?

A. With Munson and Philipp, counsel.

R-D-Q. 167. Has any one at any time promised you any pay in this matter?

2437 A. None but for my lost time, the time I should lose in the case.

R-D-Q. 168. The model that you made for Mr. Philipp in '76 and sent to Munson and Philipp at New York, which you say was the same as one section of the Gillette Cleveland car, was it not substantially alike the model Exhibit Toledo Car, and the model sworn to in the Baltimore suit?

A. It was. It was a smaller model than the two referred to. It hadn't the small removable pieces shown in the Baltimore model and Exhibit Toledo Car; with 2438 this difference and the difference in the castings I have described, they were all three alike.

R-D-Q. 169. Was that small model sent to Munson and Philipp in 1876?

A. It was.

R-D-Q. 170. Have you seen that model of the Gillette Cleveland Car, made for Mr. Philipp in '76, and sent to Munson and Philipp in that year, since that time?

A. I have not.

R-D-Q. 171. Have you seen any of the other models you sent to Munson and Philipp or Mr. Philipp at New York, since you shipped them from Cleveland in '76?

A. No, sir.

R-D-Q. 172. Please look at the models I now show you and say whether you ever saw them before, and if yea, what they are?

A. I have seen these models before; they are a part of the models I sent to Mr. Philipp, or Munson and Philipp, in 1876.

R-D-Q. 173. This side of the model I now point out, 2440 what does it represent?

A. The first car that I built up at Fort Wayne for Mr. Gillette.

That portion of the model indicated is filed in evidence and marked Defendants'

Exhibit Fort Wayne Car Model. T. H.
Palmer, Special Examiner. 2441

R-D-Q. 174. Am I to understand you that the Fort Wayne car built for Gillette or Gillette and Hathaway and used on the Toledo, Wabash and Western R. R., was constructed like this model, except that the rods which support the front edge of the upper berth hung from the roof and hooked to the front edge of the upper berth instead of vice versa, as shown here?

A. That is right.

R-D-Q. 175. Is this the original model which you made before you saw Gillette or Hathaway about building cars and before you began the construction of the Fort Wayne car? 2442

A. Yes, it is.

R-D-Q. 176. Please look at the side of the model I now indicate and state what it is?

A. It is like the model I sent to the Patent office when I made an application for a patent; I think it is the original model of that invention, but it is possible that the model in the Patent office is the original, and this a duplicate, built about the same time.

2443
That portion of the model referred to
filed in evidence and marked Defendants'
Exhibit Wilson Patent Model. T. H.
Palmer, Special Examiner.

R-D-Q. 178. The original model of the Cleveland Gillette car, was it in existence before you built the first car at Fort Wayne?

A. It was.

R-D-Q. 179. Did you send any other model to Munson and Philipp at New York, besides those spoken of? 2444

A. I did.

R-D-Q. 180. How did it compare with the Exhibit Wilson Patent model?

A. The lower berths were, I think, the same. The

2445 two single upper berths slid in a slot in the center of the partition. The upper part of the slot was wider than the lower part, so that the pivot of the uppermost berth would stop that berth part way down, and the pivot on the bottom single berth would let that berth come further down.

R-D-Q. 181. Was this last model you described the first one you made?

A. Yes, sir; and the patent model was the next one.

R-D-Q. 182. What was the next model?

2446 A. It was a cot-bed arrangement for the upper berth; and the next two was the Exhibit Fort Wayne Model and the model of the Cleveland Car, which was destroyed by my grandchild.

R-D-Q. 183. Did Mr. Philipp, in 1876, pay you anything for your time he consumed in having you hunt up these old models?

A. He paid me for the time I lost from my work, \$10.00.

2447 R-D-Q. 184. What did you receive for the three models which you sent to New York, two of which are Defendants' Exhibits Wilson Patent Model and Fort Wayne Car, and the model you constructed in '76 of the Cleveland Gillette Car?

A. Sixty dollars.

R-D-Q. 185. How long were you absent from your home in 1880, when you went to New York and gave your affidavit in the Baltimore case?

A. Eight days, I think.

R-D-Q. 186. How much were you paid for the time you thus lost?

A. I received fifty dollars.

R-D-Q. 187. Are these sums of money all that you have received in connection with sleeping car suits?

2448 A. They are.

DAVID R. WILSON.

Attest:

THOMSON H. PALMER,
Special Examiner.

Adjourned to to-morrow, November 24,
1881, at 9 o'clock, A.M.

2449

CLEVELAND, OHIO, }
November 24, 1881. }

Met pursuant to adjournment.

Counsel as before.

LUDWIG ZIMMERMANN, a witness produced by and on
behalf of the defendants, having been duly sworn, testi- 2450
fied as follows :

Q. 1. State your name, age, residence and occupa-
tion ?

A. Ludwig Zimmermann, age 55, residence Cleve-
land, Ohio, and occupation cabinet maker.

Q. 2. Did you work at car building for Wason & Co.
and Morrill & Bowers, in Cleveland, Ohio, for a number
of years ?

A. I did, I commenced in 1853 and stayed between 2451
nine and ten years.

Q. 3. Did you help build a sleeping car under David
R. Wilson, at Morrill & Bowers' shops, in Cleveland,
Ohio, in 1859, for Mr. Gillette ?

A. Yes, sir.

Q. 4. Did that car have sleeping berths along each
side of the car ?

A. Yes, sir.

Q. 5. Please describe how the lower berths were
made in that car ?

A. The back and the seats were hinged together, and 2452
there was a cross bar that went from one seat to the
other, and the two seats and two backs makes the bot-
tom that you lie on.

Q. 6. The seat and back cushions, were they hinged
together or separate ?

A. They were hinged together ; these four cushions makes the bottom bed.

2453 Q. 7. When the seat and back cushions were laid flat to make the bed, and the aisle ends of the middle cushions rested on the cross-bar, where did the wall ends of those cushions rest ?

A. On the truss plank.

Q. 8. When the seat and back cushions were arranged to sit on in the day time, did the seats all face in one direction ?

A. One faced the other, so that every two seats faced each other.

2454 Q. 9. The seat and back cushions—could you lift them off the seat frames ?

A. Yes, they were loose.

Q. 10. Were the seat frames stationary and placed back to back ?

A. Yes, sir.

Q. 11. Was there anything between the backs of these seat frames ?

A. Yes, sir ; there was a sliding board to slide up and make the partition for the upper bed.

2455 Q. 12. When this sliding board was pulled up from between the seat back, how was it held up ?

A. By two springs, one was in the back edge and one was in the front edge, when these springs sprung out they rested on top of the seat back. There was a pattern attached to the side of the car, that the cap of the sliding partition fitted in ; that held the partition stiff.

Q. 13. When this sliding partition was raised up, how near to the roof did it go at the side of the car ?

A. About five inches.

Q. 14. How was the upper berth made ?

2456 A. That was in two parts, hinged together in the middle lengthwise.

Q. 15. When it was to be slept on what held it ?

A. Two legs in front, and behind at the car side, by pins fastened to the wall of the car that went into holes in the berth.

Q. 16. How was the upper berth put away when it was not to be slept on?

A. With three straps. It folded together and rolled up in those straps up to the roof, where it was held by straps and buttons. 2457

Q. 17. In the day position with the upper berth folded up, what did they do with the sliding partitions?

A. Slid them down into the seat backs.

Q. 18. Did that leave all the space in the car above the seats open and free from one end of the car to the other?

A. Yes, sir.

Q. 19. Were there cushions on the upper berths? 2458

A. Yes, sir.

Q. 20. What kept them from falling off?

A. It was flat; there was a little something in front so that he could not get out.

Q. 21. Do you mean that the edge of this berth had a piece sticking up to keep the cushions in?

A. Yes, sir.

Q. 22. Did you make or work on the sliding partitions you have spoken of?

A. Yes, sir.

Q. 23. Was there any small pieces made to go on top of the sliding partitions when raised up? 2459

A. Yes, sir.

Q. 24. Did you make or help make those?

A. Yes, sir.

Q. 25. Were they used when the car was finished?

A. Yes, sir; they were made for the car, but we put sliding curtains there after those pieces were made.

Q. 26. Please look at the model now shown you, and which is marked Defendants' Exhibit Toledo Car, and say whether you ever saw a sleeping car each section of which was constructed like the model? 2460

A. Yes, sir. It is like the sleeping-car I have been testifying about, built at Morrill & Bowers' shops, Cleveland, O., in 1859.

Q. 27. Did that car have boxes under the seats?

A. Yes, sir.

2461 Q. 28. In that car, when the seat and back cushions were laid down to make the bed, did they lie flat, as in this model?

A. The cushions altogether were a little wider than the space between the partitions, so that the cushion that makes the head of the bed would be raised up a little.

Q. 29. Is this casting fastened to the wall of the car above the panel what you called a pattern to hold the cap on top of the sliding partition?

A. Yes, sir.

2462 Q. 30. I call your attention to the post and rail detached piece and the panel detached piece in this model that fit on top of the sliding partitions; was it pieces like those that you made to go on top of the sliding partitions in the car?

A. Yes, only mine what I made was not quite so wide, was not any wider than five inches (pointing to the small end), I mean that that sliding partition goes up so that there is not more than about five inches from the roof at the side of the car.

2463 Q. 31. Do you remember in the car that the legs on the front of the upper berth went into holes in plates as in this model?

A. Yes, sir; I do.

Q. 32. In that car you helped build at Morrill & Bowers', Cleveland, did the sliding partitions go down between two stationary partitions, forming the seat-backs, as in this model?

A. Yes, sir.

2464 Q. 33. Did that car you built under Wilson at Morrill & Bowers', in Cleveland, have a number of sections on each side of the car, each constructed like the one section you have described?

A. Yes, sir.

(Model removed from sight of witness.)

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 34. You are now a saloon-keeper at No. 838 St. Clair St., this city, are you not? 2465

A. No; I own the building and saloon, and rent it out.

X-Q. 35. You helped build two or three other sleeping-cars or worked on them at Morrill & Bowers' shops in 1859, did you not?

A. I couldn't say that it was in '59. I worked longer in the shop than that. I helped work on some more cars, but I couldn't swear it was in '59.

X-Q. 36. Well, you worked on two or three other sleeping cars beside the one you have attempted to tell about at Morrill & Bowers' shops about the year 1859, didn't you? 2466

A. Yes.

X-Q. 37. Do you recollect how any of those cars were arranged as to their sleeping construction?

A. Yes.

X-Q. 38. Do you recollect the Woodruff sleeping cars built at Morrill & Bowers'?

A. I don't know—not the name of the car.

X-Q. 39. How many sleeping cars did you work on at Morrill & Bowers' shops? 2467

A. Well, I remember two.

X-Q. 40. And you only remember two sleeping-cars built at Morrill & Bowers' shops while you were there?

A. That I worked on.

X-Q. 41. Didn't you work on every passenger car that was built at Morrill & Bowers' shops while you was there?

A. Yes, sir; I mean not on them sleeping cars. We couldn't all work on them. In those cars that I described I couldn't do all the work, but done some of the work on all of the cars. 2468

X-Q. 42. You worked, did you not, upon every passenger and sleeping car that was built at Morrill & Bowers' shops while you were there?

A. On two, what I remember.

2469 X-Q 43. Yes, I know you ain't going to remember but two sleeping cars; but isn't it a fact that you did work more or less upon every passenger and sleeping car built at Morrill & Bowers' shops while you were in their employment?

A. What I mean, I remember I work on them two sleeping cars; when we were working on new cars, framing them, all the workmen worked on them.

X-Q 44. And you did then work on every passenger and sleeping car that was built at Morrill & Bowers' shops while you were there?

2470 A. That is what I say again; I worked what I remember on them two sleeping cars.

X-Q 45. Yes, I know you are stuffed full of those two sleeping cars; but what I want to know is if you worked on all the other railroad cars built by Morrill & Bowers while you were in their employment. Don't talk about these two sleeping-cars now until you are asked about them.

2471 The first portion of the question is objected to as an outrageous insinuation and as a gross attempt to brow-beat the witness, who is a German, clearly endeavoring to answer the questions propounded.

A. When I was working there I was working on them cars. Now, sometimes I don't work; maybe I was away a week or two.

X-Q 46. Then you did work on all the other cars built by Morrill & Bowers' besides those two sleepers?

2472 A. I worked on them two sleeping cars. "Besides," that means I didn't work on those sleeping cars, don't it? I worked on those two sleeping cars and on the other cars when I was there.

X-Q 47. How long were you there?

A. Between 9 and 11 years I worked there.

X-Q. 48. How long before and how long after the year 1859?

A. Sept. 22, '53, I commenced.

2473

X-Q. 49. What was the longest time you was away while you worked there?

A. That I couldn't say the longest time; sometimes the stuff was not ready and sometimes we don't all have work.

X-Q. 50. But whenever there were cars building at Morrill & Bowers shops during that time you were working on some parts of the car, wasn't you?

A. Yes, when I worked there; sometimes he needed not all the men.

2474

X-Q. 51. Did you help build the outside of this sleeping car like the model you have been swearing about?

A. There was no outside work to do on it.

X-Q. 52. Was the outside of the car built at Morrill & Bowers' shop—the one like the model?

A. That is what I don't know.

X-Q. 53. How was the other sleeping car you worked on built?

A. The partition was different.

X-Q. 54. What kind of a partition was that?

A. It was only half of the upper bed; the partition was cut out.

2475

X-Q. 55. You had a model shown you lately which you were told was like the other sleeping car you built, hadn't you?

A. No, sir.

X-Q. 56. How were the upper berths in the other sleeping car fixed, and there were two or three of the upper berths, were there not?

A. There was only one on each bed; that means on each bed the lower part was full, and overhead there was only the half.

2476

X-Q. 57. And then in this other sleeping car you helped build there was only a half or single berth above the lower or double berth, is that it, in the one that is not like the model?

A. Yes, so much as I remember.

2477 X-Q. 58. How was this upper single berth in the other sleeping car you helped build fastened or held in place in the car either in the day or night time?

A. So much I know ; they would be hung up just like the other one ; I didn't work on the beds, I worked on the partitions.

X-Q. 59. And you haven't any distinct recollection, have you, of the construction of either of those two old sleeping cars, except as to the partitions which you worked on?

A. I mean that half partition one.

2478 X-Q. 60. And all the work that you done then on either of those two sleeping cars was to work on the half partition one, is that it?

A. I say on that one I worked on the partitions and on the other one, the Wilson car, I helped to finish it on the inside ; why, there was nothing done on the outside of that car ; it was an old car.

X-Q. 61. And you helped to build all of the other sleeping cars, didn't you?

A. No, sir ; I worked only on them two ; what I don't know I wouldn't say.

2479 X-Q. 62. The other sleeping car was all built new at Morrill & Bowers' shops ; the one with the half partitions, was it?

A. I don't know ; I wouldn't say what I don't know ; I only worked on the partitions.

X-Q. 63. Don't you know that the partitions which you put in the old car in Morrill & Bowers shops could only be raised as high as the under side of the upper berth when those berths were in position for sleeping?

A. No, sir ; he was going up to about five inches of the top on the side of the car ; I make them upper pieces, and so I know.

2480 X-Q. 64. How long were those curtains which were hung in the place of those upper pieces when they were taken away?

A. Them was a little longer than the thickness of these two beds when they was up to the roof to cover them.

X-Q. 65. You know D. R. Wilson, don't you, of this city?

A. Yes, sir.

2481

X-Q. 66 He has been to see you about this car and showed you a model like the one you have been testifying about, hasn't he?

A. He has been to see me; he don't show me no model, not before I came here.

X-Q. 67. But you saw and examined this model that you testified about before you gave your testimony, didn't you?

A. No, sir; what I worked on I remember for a long time.

2482

X-Q. 68. And you never saw any model of this sleeping car before you began giving your testimony to-day?

A. No, not before I came here; besides seeing, that means, I see the model in the shop before we made the car.

X-Q. 69. You saw that model on the bed that you have testified about before you began giving your testimony here, didn't you?

A. Well, I seen it this morning.

X-Q. 70. And that was before you began your testimony, wasn't it?

2483

A. Well, I seen it standing here in this room before I testified; I didn't examine it.

X-Q. 71. D. R. Wilson tried to get you to go and look at a sleeping car on the Michigan Southern R. R., did he not?

A. No, sir.

X-Q. 72. Do you know Patrick Watson, of this city?

A. Yes, sir.

X-Q. 73. Do you remember Mr. Watson and another gentleman calling on you in the month of February, '79, or about that time, about the old sleeping cars you worked on some twenty years ago in Morrill & Bowers' shops?

2484

A. Not that I know of.

X-Q. 74. Did you not state to Mr. Watson and that gentleman at that time that you had worked on several

2485 sleeping cars in Morrill & Bowers' shop some twenty years ago, but that you was only a workman, and had got the construction of the berths and partitions all mixed up in the different cars, and couldn't tell how every one of them was constructed; did you not make substantially such statements at that time?

A. No, sir.

X-Q. 75. Did you not say at that time and place that Wilson had tried to get you to go and look at the sleeping car on the Michigan Southern R. R.?

2486 A. No, sir; I was out on the sidewalk in front of my house; Watson came past and he asked me—he said, Zimmermann, has Wilson seen you; I say yes; he say what he say. He asked me if I remembered somethings from that sleeping car the inside of the partition; I say yes; that is all Wilson said about sleeping cars.

X-Q. 76. Did you not tell Mr. Watson and that gentleman at that time that you were a good carpenter on the outside of a car, but you didn't know anything about the inside of these sleeping cars?

A. I don't say any such things to him at all. I am a cabinet-maker.

2487 X-Q. 77. Were you subpoenaed to come here, or did you come of your own accord?

A. I am not subpoenaed; Wilson, he told me a gentleman was here who would like to see me.

X-Q. 78. Did you ever see either of those sleeping cars after they left Morrill & Bowers' shops?

A. No, sir.

X-Q. 79. Until Wilson began to talk to you about the construction of this old sleeping car you had forgotten even that such a car was built, hadn't you?

2488 A. No, sir; Wilson, he don't say nothing like that. He said Zimmermann, do you remember how those sleeping cars were built. He told me, I remember how that sleeping car be built. Wilson, he told me, what you remember about that sleeping car what we build in the shop in that old car.

X-Q. 80. You haven't any positive recollection at all,

have you, as to how either of those sleeping cars were constructed?

A. Yes, I got.

2489

X-Q. 81. How many times has Wilson been to see you to get you to remember about that old sleeping-car?

A. Nothing at all.

X-Q. 82. Did he pay you any money?

A. No, sir; I need not Wilson's money or nobody else's money.

X-Q. 83. Did you make an affidavit for Wilson?

A. No, I don't know to-day what all them things (referring to the written evidence) are for, all I know you write down what I say.

2490

X-Q. 84. Wilson told you at the time he talked to you that there was a suit about a patent-right, didn't he?

A. No, sir.

LUDWIG ZIMMERMANN.

Attest:

THOMSON H. PALMER,
Special Examiner.

2491

Adjourned to November 25th, 1881, at
10 o'clock A. M.

CLEVELAND, OHIO, }
November 25, 1881. }

Met pursuant to adjournment.

Counsel appearing as before.

2492

GROVENER B. BOWERS, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows:

Q. 1. State your name, age, residence, and occupation?

2493

A. Grovener B. Bowers; age, 72; residence, Cleveland, Ohio. I am president of the St. Clair Street Rail Road in this city.

Q. 2. Were you not formerly a member of the firm of Morrill & Bowers, railroad car builders in this city?

A. I was the Mr. Bowers of that firm.

Q. 3. Did not that firm build a sleeping car for John M. Gillette, under the supervision of your foreman, David R. Wilson?

A. Yes, sir; it was in 1859.

2494

Q. 4. How were the lower berths of that sleeping car constructed?

A. The seats were facing each other, or made back to back, and to form the lower berth they were pulled forward the back falling down level with the seat. The seat cushions rested on the truss plank on the back side, and on a bar which was fastened at one end and which swung around at the outside of the berth reaching the other seat.

Q. 5. Did the frames of the backs of two abutting seats have anything between them?

2495

A. Yes; there was a sliding head-board or partition which would run up to form the head-board and foot-board of the upper berth.

Q. 6. How were the upper berths made?

A. The upper berths was in two platforms hinged together that would spread out and fold up like a book.

Q. 7. Was the back platform suspended by anything from the roof?

2496 A. It was suspended by straps to fold up by, but when it was used as a berth it was supported by two castings at each end, one casting fitting into the other.

Q. 8. How was the front platform of this upper berth supported when the berth was to be slept on?

A. There were legs or irons fastened to the upper berths that went down and set into sockets on the arms of the seats.

Q. 9. Were there cushions on the upper berths?

A. Yes.

Q. 10. Anything to keep them from sliding off when the berth was in use? 2497

A. They were permanently fastened to the woodwork that they rested on.

Q. 11. Were the seat and back cushions of the lower berth which you describe as being capable of being pulled forward so as to fall down flat and form the bed, hinged together?

A. They were.

Q. 12. Were there any boxes under the seats?

A. Yes.

Q. 13. When the seat cushion was pulled forward and the back cushion dropped down level with it, did that bring the seat cushion over the foot space between the seats and the back cushions over the boxes? 2498

A. Yes.

Q. 14. Were these seat and back cushions constructed so that they could be lifted bodily out?

A. Yes.

Q. 15. When the lower berth was ready to sleep in, did the permanent seat back frames or partitions form the head and foot-boards of the lower berth? 2499

A. Yes.

Q. 16. When the sliding partition was drawn out from between the seat backs and raised up to form the head and foot-board of the upper berths, as you have stated, what supported it?

A. Springs on the front edge of the sliding partition came out and rested on the seat backs. I don't know whether there was any spring on the back edge or not.

Q. 17. Were these sliding partitions the full width of the seat?

A. Yes.

Q. 18. How much above the upper berths did these sliding partitions reach? 2500

A. I should think 18 or 20 inches, perhaps more.

Q. 19. Was the car fitted up with a number of sec-

tions of such upper and lower berths on both sides of its central aisle?

2501 A. Yes, sir.

Q. 20. Please examine the model now shown to you marked Def'ts' Exhibit Toledo Car, and say whether you ever saw a sleeping car the sections of berths of which were constructed like this model?

A. Yes; I mean the car that I have been testifying about built for Gillette, in 1859, at my shops. The upper berth cushions are loose in this model, I remember them as fixed in the car, that is, fastened to the platforms.

2502 Q. 21. I call your attention to the metal caps attached to the wall of the car, into which the back upper edge of the sliding diaphragm fits when the diaphragm is raised; do you remember such caps in the car itself?

A. I do.

Q. 22. When I called your attention to the model just now the detached pieces which I now hold in my hand were not with it; I place these pieces one each on top of the raised sliding diaphragms, and ask you to state whether you remember any corresponding pieces in the car itself?

2503 A. I don't remember that there was any.

Q. 23. Do you remember any short valance or short curtains that were hung to slide on rods in the place of these wooden pieces, and to fill the space between the roof and the top of the sliding diaphragms, in that sleeping car?

A. I think they were in the car.

Q. 24. In the car when these sliding partitions were raised up, did they complete the fixed partitions or seat backs, and at the same time act as head and foot boards for the upper berth?

2504 A. They did.

Q. 25. I unmake the upper berth by swinging its legs against the front edge of the outer platform, lift the back platform off from hooks on the side of the car, fold the two platforms by their hinges, so that they come back to back, and then turn the folded berths

once upward to the roof of the car ; is that the way the upper berths in that car were made and operated ?

2505

A. Yes, sir.

Q. 26. You have recently examined the books of Morrill & Bowers, at my request ; will you please state when the car you have testified about built by that firm was finished and delivered as shown by those books ?

A. It was run out on September 6th, 1859, over the Cleveland and Pittsburg R. R.

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 27. Haven't you stated to several persons in the last few years that the only cars you recollected as being built at Morrill & Bowers' shops for sleeping purposes, where you could describe their sleeping devices, were the Woodruff cars ?

2506

A. No, sir.

X-Q. 28 Have you not stated to several persons that you had no recollection as to how the sleeping parts of the car built for Gillette were constructed ?

A. I don't think I have.

X-Q. 29. Haven't you stated to several persons in this city, that your old partner, Mr. Morrill, attended to the putting in of the sleeping arrangements into the old car for Gillette, and that you didn't have anything to do with it, and did not know how the sleeping devices were arranged and constructed, and haven't you referred two or three parties to Mr. Morrill to ascertain those facts within the last few years ?

2507

A. I have referred parties, perhaps, to Mr. Morrill, as having perhaps a better recollection of it ; but to the other parts of the question I answer, No. We didn't either of us have very much to do with it.

X-Q. 30. You had forgotten all about how that old Gillette sleeping car was constructed until some persons showed you a device which they said was a model of it, hadn't you ; and haven't you made such a statement ?

2508

A. No.

X-Q. 31. You are just as positive of that as anything
2509 you have testified hereto, ain't you?

A. Yes; I might have forgotten some things, but I
hadn't forgotten all about it.

X-Q. 32. Didn't you state to parties in this city two
or three years ago, that you didn't know John M. Gil-
lette, and had never heard of him in connection with
sleeping cars, and that all the sleeping cars Morrill &
Bowers ever built, were like the Woodruff cars?

A. No, sir.

X-Q. 33. Haven't you stated to two or three parties
in this city, within the last two or three years, that you
2510 didn't recollect distinctly whether the partitions in this
Gillette car, as you now call it, were fixed or movable?

A. I don't think I have.

X-Q. 34. You didn't have any recollection about it,
did you, until somebody told you or showed you a
model?

A. Yes, I did.

X-Q. 35. You are the same party who made an affi-
davit in the Baltimore case, ain't you?

A. I have made an affidavit concerning this sleeping
car, sometime within a few years.

2511 X-Q. 36. Were you subpoenaed to come here and
give this testimony, or did you come voluntarily?

A. I came without a subpoena.

X-Q. 37. Did you have anything to do personally
with the building of that Gillette car?

A. I didn't work on the car.

X-Q. 38. And you only saw it casually as you did
other cars building in the shop?

A. Yes, sir.

X-Q. 39. Isn't it a fact that you hadn't any positive
and distinct recollections of the internal construction of
2512 that Gillette car until you saw a model and talked the
matter over with Wilson?

A. No.

X-Q. 40. You refused, didn't you, a year ago to make
any affidavit for the complainants in this case, as to the
construction of that car?

A. No, not that I know of.

X-Q. 41. You built a sleeping car for Myers & Furniss, at your shops, didn't you, some twenty years ago? 2513

A. Yes.

X-Q. 42. How was the upper berths of that car arranged?

A. They were arranged to pull up by some device sliding on rods.

X-Q. 43. Don't you know as a matter of fact that the car you built for Myers & Furniss didn't have any upper berths in it at all?

A. No.

X-Q. 44. And you are just as confident, ain't you, 2514
that the car you built for Myers & Furniss, had upper berths in it that slid upon rods as you are of the construction of the Gillette car, are you not?

A. Yes, sir.

RE-DIRECT EXAMINATION.

R-D-Q. 45. Have you any interest of any kind to be affected in any manner by the giving of your testimony in this case?

A. Not at all.

GROVENER B. BOWERS.

2515

Attest:

THOMSON H. PALMER,
Special Examiner.

Adjourned to to-morrow, November
26th, 1881, at 10 o'clock, A.M.

2516

2517

CLEVELAND, OHIO,
November 26th, 1881. }

Met pursuant to adjournment,

Counsel appearing as before.

JOHN HEIDENREICH, a witness produced by and on behalf of the Defendants, having been duly sworn, testified as follows :

2518

Q. 1. State your name, age, residence, and occupation.

A. John Heidenreich ; age, 58 ; residence, Cleveland, Ohio, and I am a cabinet maker by trade.

Q. 2 Did you work in 1859 at Morrill & Bowers' shops in Cleveland, Ohio, on a sleeping car, under D. R. Wilson ?

A. Yes.

Q. 3. How were its lower berths made ?

2519 A. They were made out of the seats ; the seat frames were stationary back to back, so that two seats faced each other.

Q. 4. Was there anything between the stationary partitions of the seat frames ?

A. Yes, there were sliding partitions. The sliding partition goes down to the floor and raised up near to the roof ; when it was up divided one upper berth from the other.

Q. 5. When it was down in the seat back and the upper berth was put up, was the car all open from one end of the car to the other ?

2520 A. Yes, it was.

Q. 6. How was the upper berth made ?

A. The upper berth was made of two pieces hinged together in the middle.

Q. 7. How did they put the upper berth out of the way ?

A. They doubled it together and rolled it up on straps right up to the roof.

Q. 8. When the upper berth was down to sleep on, what supported it against the side of the car? 2521

A. It went on hooks.

Q. 9. What supported it at the front edge?

A. There was hangers on each side of the bed that rested on the seat arm.

Q. 10. The sliding partitions that raised out of the seat backs to separate the upper berths, how wide were they?

A. They came out as far as the seat.

Q. 11. What made the bed of the lower berth?

A. It was the seat and back cushions two pieces each hinged together. 2522

Q. 12. How did they make a bed of them?

A. They slid them out so that they come together and go down flat.

Q. 13. When that was done the seat cushions would be in the middle, wouldn't they?

A. Yes.

Q. 14. What did they rest on?

A. They rested on the back on the truss plank and on the front of the bed it was a kind of a bar that was pulled from one seat to the other. That is what the bed rested on. 2523

Q. 15. Did the car have this kind of sections of berths along both sides of it with the aisle running between them?

A. Yes.

Q. 16. I call your attention to a model marked Defendants' Exhibit Toledo Car, and ask if you ever saw a sleeping car the sections of which were constructed like that model?

A. Yes; the one I have been testifying about.

2524

Q. 17. When the model was just shown to you these removable pieces that I hold in my hand were not with it. Who made the pieces in the car like this post and rail piece I now show you and place on top of the sliding partition?

A. I helped make some of those pieces.

2525 Q. 18. Did you help make some of the pieces like the solid removable piece I show you?

A. I didn't work on those, but I saw them.

Q. 19. Do you remember whether or not in the car there was any short curtain made to hang between the roof and the top of the sliding partition when it was raised?

A. Yes, sir; there was short curtains there that slid back to the side of the car.

Q. 20. In the car how wide was this sliding piece that went over the top of the partition?

2526 A. Between seven or eight inches on the front end.

Q. 21. Did you help make these sliding partitions for that car?

A. I did.

Q. 22. Do you remember these thumb springs on the edge to hold the partitions up?

A. Yes, sir.

Q. 23. I call your attention to the caps fastened to the side of the car. Were those in the car itself?

A. Yes, sir.

Q. 24. What were they for?

2527 A. To catch the end of the sliding partition when it was standing up.

Q. 24½. Do you remember these legs that are hinged to the front edge of the upper berth and go down into sockets on the seat arms?

A. Yes, sir.

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q 25. Who got you to come up here and give this testimony?

2528 A. This gentleman here, Mr. Munson.

X-Q. 26. Did not D. R. Wilson send you up here, or Mr. Zimmermann?

A. Mr. Wilson was in my house and says that Mr. Munson wanted to see me, and Mr. Wilson give me Mr. Munson's card.

X-Q. 27. Have you ever seen the sleeping car which you say was like this model since it went out of Morrill & Bowers' shops, over 20 years ago? 2529

A. No ; I have never seen that car since.

X-Q. 28. Morrill & Bowers built several sleeping cars about 20 years ago, didn't they?

A. Yes ; a little over 20 years ago.

X-Q. 29. You were a common day laborer then, were you?

A. I don't know what you call a common day laborer ; I was a cabinet maker by trade.

X-Q. 30. How much did you ever get a day 20 years ago? 2530

A. Twelve shillings ; that was the highest they paid their workmen.

X-Q. 31. You had forgotten how these different sleeping cars were constructed until you talked with Wilson and Zimmermann, had you not?

A. I didn't talk to Wilson or to Zimmermann, or to nobody.

X-Q. 32. You don't understand the English language very well, do you?

A. I understand so much as I want for my own use, that is all ; I understand so much as I use in the shops. 2531

X-Q. 33. You had seen this model which you have just testified to before you began giving your testimony, had you not?

A. Yes ; Mr. Munson showed it to me. I seen it before I sat down here.

X-Q. 34. Were you subpoenaed to come here, or was any paper served on you telling you to come?

A. No.

X-Q. 35. Did you help build the outside of this car like the model? 2532

A. Yes.

X-Q. 36. And you done more work on the outside of the car than you did on the inside, didn't you?

A. The inside work more than the outside.

X-Q. 37. Don't you know that the partitions on the

inside of the car like the model that you worked on
2533 were stationary and ran clear from the floor to the ceiling?

A. Yes; it was stationary, didn't move at all.

X-Q. 38. Don't you know that the upper berth in the car like this model was only half as wide as the lower berth?

A. No.

X-Q. 39. Which was the widest in that car, the upper berth or the lower berth?

A. They were both alike.

X-Q. 40. How many upper berths were there in the car like the model, one above the other?
2534

A. There was two; there is two what we got, these two together formed a double bed.

X-Q. 41. Every time you have answered a question here you have looked right at the model?

A. No, sir.

(Model removed from sight of witness.)

2535 Defendants' attorney states that from the time the model was introduced for identification by this witness to the time the last question was answered, the model stood on a bureau; that when complainants' counsel propounded questions he, apparently with the purpose of preventing witness from seeing the model, stood between the witness and the model, and it is believed that Mr. Offield, the counsel, is broad enough to have effected that purpose.

2536 X-Q. 42 Did that sleeping car like the model have any raised roof to it?

A. No; not at that time, we built it.

X-Q. 43. How many windows were there in each section?

A. There was two.

X-Q. 44. Wasn't there three windows in some sections?

A. Not that I know of.

2537

X-Q. 45. You haven't a very distinct recollection about the inside construction of that sleeping car, have you?

A. No; I have.

X-Q. 46. What color was that sleeping car painted on the inside?

A. I guess it was made of oak wood, I believe. It wasn't painted.

X-Q. 47. How many days did you work on that sleeping car like the model?

A. That is more than I can tell you.

2538

X-Q. 48. Did you work more than five days?

A. More than that, but I couldn't tell you how long.

X-Q. 49. Wasn't there a curtain that hung down from between the upper berth in that sleeping car and made a partition so that you could not see from one berth to the other when the berths were in position for sleeping?

A. Yes.

X-Q. 50. Were there any curtains hanging down in front of those berths?

A. Yes.

X-Q. 51. How were they held in place?

2539

A. There was a kind of a railing right through the car, and there is where these curtains hung so that they could slide by rings.

RE-DIRECT EXAMINATION BY MR. MUNSON.

R-D-Q. 52. You said in answer to X-question 37 that the partitions in the car were stationary and ran from the floor to the ceiling; did you understand that that question was about the car like the model here? 2540

A. That was a misunderstanding of me about the car like the model, I didn't say that. I misunderstood that. We built three cars that time.

R-D-Q. 53. Did one of these cars have stationary

partitions running from the floor to the roof that you built at that time?

2541 A. Yes.

R-D-Q. 54. Are you sure that there was a car built at that time like this model here?

A. Yes.

R-D-Q. 55. With the sliding partitions just as it shows them?

A. Yes.

R-D-Q. 56. When you answered X-question 45 "No," did you understand it to mean that you did remember about the car or did not remember?

2542 A. He asked me if I have got a good remembrance of the inside of that car like the model, and when I answered first I didn't understand it.

R-D-Q. 57. And when you did understand it, you answered you had, did you not?

A. Yes.

R-D-Q. 58. When you answered cross-question 49, you said there was a curtain hung clear down between the upper berths—the car like the model; what did you mean by that?

2543 A. That is right about the curtain in front of the berth. The little curtain was on the side of the bed.

RE-CROSS-EXAMINATION BY MR. OFFIELD.

R-X-Q. 59. You worked on three or four sleeping cars at Morrill & Bowers' shops about 20 years ago; isn't it a fact that it being so long ago that you have got mixed in your recollection the construction of the different kinds of sleeping cars?

A. I guess not in this testimony I have give here.

2544

JOHN HEIDENREICH.

Attest:

THOMSON H. PALMER,
Special Examiner.

Adjourned to 2 o'clock P. M.

2 o'clock P. M.

Met pursuant to adjournment.

2545

Counsel as before.

Adjourned to Tuesday, Nov. 29th, 1881,
at 10 o'clock A. M., at Boody House, To-
ledo, Ohio.

BOODY HOUSE, TOLEDO, OHIO, }
November 29th, 1881. }

2546

Met pursuant to adjournment.

Present:—For Complainants, C. K. OFFIELD, Esq.
For defendants, H. T. MUNSON, Esq.

BARNET E. BULLOCK, a witness produced by and on
behalf of the defendants, having been duly sworn, testi-
fied as follows :

Q. 1. State your name, age, residence, and occupa-
tion ?

2547

A. Barnet E. Bullock ; age 45 ; residence Toledo, Ohio,
and occupation, Hardwood Lumber Dealer and Manu-
facturer.

Q. 2. Were you ever a conductor on the Toledo, Wa-
bash & Western R. R. ?

A. I was.

Q. 3. From when to when ?

A. From the spring of 1856 to August 1867.

Q. 4. While you were conductor upon that road did it
have any sleeping cars running with its trains ?

A. It had.

2548

Q. 5. When was the first one put in use upon that
road ?

A. In the winter of 1858 and '59.

Q. 6. When was the next one put in use upon the
road ?

A. I should say six or eight months afterwards. I am sure it was.

2549 Q. 7. Was there another one put upon the road, and if so, how long after the second?

A. There was. I should say it was six or eight or it might have been ten months after.

Q. 8. Did you have any interest as owner in this sleeping car equipment of the Toledo, Wabash & Western R. R.?

A. I did.

Q. 9. Who did you purchase it of?

A. Joseph Paige.

2550 Q. 10. Did you ever know of a man by the name of Hathaway in connection with those sleeping cars?

A. I did; he was the first owner.

Q. 11. Were you familiar with those sleeping cars while they were running on the road?

A. I was.

Q. 12. Will you please describe how the lower berths were constructed in the first car put on in the winter of '58 and '59?

2551 A. The back and seat made half of the lower berth. They were strapped or hinged together, and before drawing them out there used to be a rest to support them that reached from one seat to the other. There was also a door or a board that swung out from the side of the car to make the head board and foot board between adjoining berths.

Q. 13. When the seat and back cushions were drawn out do you mean they lay flat so as to make a horizontal bed?

A. Yes, sir.

Q. 14. How were the upper berths made in this car?

2552 A. They were two pieces hinged together and folded up, and strapped to the top of the car, and when they let them down there was two straps on the back to keep them from going clear down to the lower berth or to keep them in place, and also two sockets or rests on the side of the car that they rested on. The front was

supported by two hooks that reached up to the top of the car or from the top down. I am not sure which.

Q. 15. Was there any separation between the upper berths at night when they were to be slept on? 2553

A. There were shutters.

Q. 16. Where did they come from?

A. They were pulled out from between the windows on the inside of the car.

Q. 17. What do you mean by shutters; please explain a little more fully?

A. They were like an inside blind, pulled out and shut up. I mean folded.

Q. 18. When these berths were ready to be slept upon I understand you that the swinging door or board formed the partition between adjoining lower berths, and the folding shutters pulled out from the side of the car formed the partition between adjoining upper berths; is that correct? 2554

A. Yes, sir.

Q. 19. How were the lower berths constructed of the second car which came on six or eight months after the first car?

A. The seats were stationary, the passengers riding back to back. The seat and back cushions were hinged or strapped together and pulled out to lie flat and were supported by a rest that went across in front of the seats the same as the other car. 2555

Q. 20. What did this bar support?

A. It supported the front edge of the cushions next to the aisle.

Q. 21. What supported their back edges?

A. They rested on a plank or projection from the side of the car.

Q. 22. When the seat and back cushions which were hinged or connected together were pulled out to lie flat did the seat cushions meet together? 2556

A. They did.

Q. 23. That would make the back cushion lie flat on the seat frame, wouldn't it?

A. It would.

Q. 24. Was there any box under the seat?

A. There was.

2557

Q. 25. When the back and seat cushions of the lower berths were spread flat to sleep on, did the wooden backs of the stationary seats remain in place as divisions between these lower berths?

A. They did.

Q. 26. How were the upper berths in this second car constructed?

A. The same as the first car, with the exception of the rests that supported them. There was an iron that dropped down from the front of the upper berth at each end that rested upon the upper part of the seat.

2558

Q. 27. Were there any irons or rests at the back edge of the berths and side of the car to support the upper berth?

A. There was, the same as the other car.

Q. 28. Was there any way of dividing one upper berth from another in this second car?

A. There was a foot board or head board that dropped down between the backs of the seats. When the upper berth was down to sleep on they raised up this foot board.

2559

Q. 29. What supported this head and foot board that slid up from between the backs of the seats, so as to stand between the upper berths, when it was raised up?

A. There was a spring to hold it in place.

Q. 30. Spring where?

A. In its front and back edges.

Q. 31. Did these sliding head and foot boards extend above the upper berth when it was to be slept on?

A. They did.

Q. 32. Did they reach clear up to the roof?

2560

A. They did not.

Q. 33. How near to the roof did they go?

A. I should say six or eight or ten inches, I ain't sure which, there was a little space there.

Q. 34. When they were raised up, I understand from

your description, they formed a continuation of the wooden backs of the seats upwards ; is that so ?

2561

A. It is.

Q. 35. When the sliding head boards were let down into the seat backs, and the upper berths were folded up and fastened at the top of the car, was there a clear, unobstructed and free space over the seats from one end of the car to the other ?

A. There was.

Q. 36. Was that so in the first car too, when it was made up for day use ?

A. It was.

Q. 37. How was the third car constructed ?

2562

A. Like the second, excepting the cushions for the lower berths ; they were separate. The back and seat cushions were separate—not connected together.

Q. 38. Did all these cars have a number of sections along each side of the car, each section made of an upper and lower berth and partitions, as you have described ?

A. They did.

Q. 39. Was there a central passageway between the sections ?

A. There was.

2563

Q. 40. How long was the first car you have described kept in use on the road ?

A. I should say twelve to sixteen months. I am not sure ; it might have been eighteen or twenty ?

Q. 41. Did the third car take its place ?

A. Yes, sir.

Q. 42. Could you lift the seat and back cushions that made the lower berths, so as to remove them bodily, from all three cars ?

A. Yes, sir.

Q. 43. What kept the cushions or mattresses on the upper berths from sliding off when the cars were in motion ?

2564

A. A piece of wood on the side next to the aisle, which was higher than the lower part of the berth.

- Q. 44. Did these three cars have curtains to hang in front of the berths ?
- 2565 A. They did.
- Q. 45. What did they hook onto ?
- A. A rod.
- Q. 46. Did the berths in the three cars have pillows ?
- A. They did.
- Q. 47. Blankets ?
- A. Yes, sir.
- Q. 48. Do you remember any short, narrow curtain that slid on a rod over the top of the sliding head and foot board when it was raised up, that filled the space of six or eight inches between the top of that board and the roof ?
- 2566 A. There was one.
- Q. 49. In all the cars ?
- A. No, sir ; I think not.
- Q. 50. Did more than one car have them ?
- A. Not but one car.
- Q. 51. Was any charge made to passengers for occupying these berths ?
- A. There was.
- Q. 52. What year did the second and third cars go out of use ?
- 2567 A. I think in '65 or '66.
- Q. 53. Have you seen either of the three cars or any parts of them since they went out of use ?
- A. No ; only a few of the blankets. I took some of the blankets when the stuff was sold ; I think six pair. That is all of the cars that I have seen since they went out of use.
- Q. 54. Have you seen any model or other representation of either of these sleeping cars or any part of them, since the cars went out of use ?
- 2568 A. I have not.
- Q. 55. Did you not have charge of a train as conductor for several years, which train was in part composed of one of these sleeping cars ?
- A. I did.
- Q. 56. Please look at the model I now show you

marked Defendants' Exhibit Fort Wayne Car, and say whether you ever saw a sleeping car the sections of which were constructed and operated like this model, and where? 2569

A. I did; it is like the first car I have described.

Q. 57. You said in your testimony that you did not remember whether the rods were attached to the front of the upper berth and hooked to the roof, or whether they were attached to the roof and hooked to the berth. Does this model refresh your memory at all on that point?

A. It does, that is the car.

Q. 58. Do you remember the bolts in the edge of the back and seat cushions that are shown in the model? 2570

A. I do.

Q. 59. What were they for?

A. To keep the seats in place; I wasn't sure about the lever, whether it was connected so as to swing as in the model, or whether it was loose and put behind the berths.

Q. 60. I now show you a second model, marked Defendants' Exhibit Toledo Car; please state whether you ever saw a sleeping car with sections constructed like this model, and if so, where? 2571

A. I have, sir, on the Toledo, Wabash & Western Road; it is like the second car I have described, and is like the third car I have described, except the hinging of the cushions.

Q. 61. I call your attention to the caps or stops fastened to the side of the car that limit the upward movement of the sliding head boards, and hold their rear upper corners; do you remember any such thing in the second and third cars?

A. There was a rest or a stop, but I don't remember whether it was like that. 2572

Q. 62. I call your attention to the way the legs operate to support the front of the upper berth. They stand in sockets at the top of the seat arm and then swing up and lie against the front edge of the berth; do you re-

member such a construction in the second and third cars?

2573 A. I do.

Q. 63. Did the back edge of the upper berths hook onto the side of those cars, as it does in this model?

A. They did.

Q. 64. And the upper berths double together and roll up in the straps as shown in this model?

A. Yes, sir; they did.

Q. 65. Thus far you have not seen the two detached pieces I hold in my hand, have you?

A. No, sir; I never saw them before.

2574 Q. 66. I now place the post and rail piece on top of one raised partition, and the solid detached piece on top of the other raised partition; did any of those cars have any such pieces in them?

A. Not that I remember.

(The models are now placed in their boxes out of sight, and the witness is submitted for cross-examination.)

CROSS-EXAMINATION BY MR. OFFIELD.

2575 X-Q. 67. When did you first go into the employment of the Toledo, Wabash and Western R. R.; in what capacity, and how long did you remain in such employment?

A. In the spring of 1856, until August, 1867, as conductor.

X-Q. 68. Between what points did you run during that time?

2576 A. At first between Toledo, Ohio, and Lafayette, Indiana; then Toledo, O., to Attica, Indiana; then Toledo, O., to Danville, Illinois, for a short time; then the terminus of the Wabash Road was changed to State Line. The officers of the Great Western R. R. of Illinois and the Wabash Road had some disagreement about the use of the track from State Line to Danville, belonging to the Great Western Road, and

we got orders one Sunday to take trains and engines to State Line and start from there Monday as the terminus. That was in the winter of '56 and '57; I think 2577
February or March.

X-Q. 69. These three sleeping cars that you have attempted to describe ran then between Toledo, Ohio, and State Line, Ind., over this road; is that so?

A. Not always. They were left at Lafayette, Ind., some of the time.

X-Q. 70. Did the Railroad Company own these sleeping cars?

A. They did not.

X-Q. 71. Who did?

A. Gillette & Hathaway, or Gillette & Co. at first. 2578

X-Q. 72. Who did they sell to?

A. I don't know whether they sold them to a party before Paige bought them, and Paige bought them of a second party, that I don't know.

X-Q. 73. Who is Paige, and how long did he own these three sleeping cars?

A. Joseph Paige, of Toledo, Ohio. He must have owned them, or partly owned them, from about 1860 till 1865 or '66.

X-Q. 74. Were there any other sleeping cars run on that road except these three during the time you were connected with the road? 2579

A. There was two.

X-Q. 75. When did they come on the road, and for how long did they run?

A. I should say six months or a year after the first car, about that. They ran till these two last cars of mine were taken off. These cars at times ran between State Line and Lafayette, as change of time-table made it necessary, which was the same with my cars stopping at Lafayette at times; I do not know who these 2580
two cars belonged to, but I suppose to the Great Western R. R., of Illinois. They ran from Lafayette or State Line, as the case might be, to Springfield or Quincy, Ill., in connection with the day trains on the Toledo, Wabash & Western Road.

RECESS.

2581 X-Q. 76. What was the reason that the first sleeping car you have described went off the road ?

A. To make place for a better one.

X-Q. 77. What became of the first sleeping car ?

A. I think it was made into a day coach.

X-Q. 78. It did not work satisfactorily and was abandoned, was that it ?

A. I don't know.

X-Q. 79. Did you have anything to do with those sleeping cars except to collect the fares from the passengers ?

2582 A. That was all.

X-Q. 80. What finally became of the two last cars you have described, in which you were a part owner ?

A. I think the road appropriated them.

X-Q. 81. Were those two sleeping cars changed in any manner while you knew anything about them ?

A. I don't think they were

2583 X-Q. 82. As I understand you, all the sleeping cars which ever ran on the Toledo, Wabash & Western Road between Toledo and Lafayette while you were with the road, were these three cars you have described ; is that so ?

A. It is so unless some outside cars went up on some special occasion, but never with me, that I remember. I can't be positive about that.

X-Q. 83. What was charged for these berths, the upper and lower, in those three cars while you were with the road ?

A. I think a dollar for the lower and fifty cents for the upper, if there was a single person in it ; if there were two persons in it, the charge was a dollar.

2584 X-Q. 84. Has your recollection as to the construction of those three old sleeping cars been refreshed in any manner ?

A. No, sir.

X-Q. 85. Do you know where the third car that you

have described as being like the model Toledo car was built?

A. At the Fort Wayne shops. I was told when it was running on the road that it was built there. 2585

X-Q. 86. Who had this third sleeping car built there?

A. I don't know whether it was Gillette & Co., or Paige.

X-Q. 87. This third sleeping car was an old passenger car altered over, was it not?

A. I think so.

X-Q. 88. How long after these cars went out of use in 1865 or '66 was it before they had any other sleeping cars on that road? 2586

A. Very soon after.

X-Q. 89. Did you run a day or a night train between 1859 and 1865?

A. Part of the time a day train, part of the time a night train.

X-Q. 90. How much of the time a night train?

A. I should say about half.

X-Q. 91. When did you sell out your interest in those two last sleeping cars?

A. Never sold out, the privilege of running them was taken away. 2587

X-Q. 92. Were you subpoenaed to come up here and testify?

A. I was not, I came voluntarily, at the request of Mr. Munson.

X-Q. 93. You are quite certain, are you, that that sliding board which dropped down between the backs of the seats extended above the two adjoining upper berths when they were in position for sleeping?

A. I am.

X-Q. 94. It was with considerable hesitation that passengers rode in those two sleeping cars, constructed as you have described, after they found out how they were built, wasn't it? 2588

A. It was not. Up to the commencement of the war people used to think it was a high price; during

the war they were overcrowded, and there was no objection to the price, and they ran full very often.

2589

RE-DIRECT EXAMINATION BY MR. MUNSON.

R-D. Q. 95. During the time when you run a day train regularly, as conductor, is it not a fact that you were frequently changed off so as to run the night train?

A. I was very often.

R-D. 96. Have you any interest of any sort to be affected directly or indirectly by the giving of your testimony in this case?

A. None whatever.

2590

Attest:

B. E. BULLOCK.

THOMSON H. PALMER,

Special Examiner.

Adjourned to to-morrow, November 30, 1881,
at 10 o'clock, A. M.

TOLEDO, OHIO, }
November 30th, 1881. }

2591

Met pursuant to adjournment.

Counsel appearing as before.

THOMAS MASSEY, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follow:

Q. 1. State your name, age, residence and occupation?

A. Thomas Massey, I will be 49 next May, residence, 2592 Toledo, Ohio, janitor of Mr. John Drummond's building.

Q. 2 Were you ever a porter upon a sleeping car, and if yea, on what railroad?

A. I was; on the Toledo, Wabash & Western Railroad.

Q 3. When did you commence?

A. In the spring of 1862.

Q. 4. When did you leave your portership of that sleeping car? 2593

A. I ran the car until they took the car off. I was the last porter on that car.

Q. 5. Were there two sleeping cars on the road running opposite each other during all the time you were there?

A. Yes, sir.

Q. 6. How long did you run as porter on the sleeping car?

A. To the best of my recollection it was near about four years. 2594

Q. 7. Who employed you on the sleeping car?

A. Joseph Paige.

Q. 8. How were the seats arranged in your sleeping car?

A. Stationary, back to back, two seats faced each other.

Q. 9. What made the lower berth?

A. Spread the seat and back cushions out flat and they formed the lower berth.

Q. 10. What supported the cushions when they were spread flat, between the two seats? 2595

A. There was a bar that went across and supported the front end.

Q. 11. What supported their back ends?

A. The trestle board of the car, I think they called it, supported the back edge.

Q. 12. What made the upper berth?

A. The upper berth was in two pieces, hung in the centre by hinges; when it was spread out it made the upper berth, with two legs that turned down and rested into a socket on the seat arms. 2596

Q. 13. Was there a leg at each end?

A. Yes, at each end of the top berth on the front.

Q. 14. What supported the back of the upper berth when it was down?

A. There were two hooks on the back of the car that

caught the top berth at the back edge. They were fastened to the side of the car.

2597

Q. 15. Was there anything to divide one upper berth from the next one, when the upper berths were to be slept on?

A. There was a slide running up from between the seat backs that extended between the upper berths. It went nearly to the roof of the car, and formed head and foot boards for the berths when it was up.

Q. 16. What held this slide, when it was up, from falling down?

2598

A. A spring on each edge, back and front, that, when it was up, flew out and caught on top of the seat back.

Q. 17. Was there anything to prevent this slide from pulling clear out when you raised it up?

A. There was a casting fastened on the back side of the car that the top of the slide struck into when you raised the slide up.

Q. 18. How did you get the upper berths out of the way in the day time?

2599

A. They were hinged in the center. We folded them up together and then turned them up to the roof in three straps, and had two straps in front to fasten them up there.

Q. 19. When they were folded up against the roof was there any little curtain to hide their front edge?

A. There was a stationary curtain that hid the front edge of the top berth.

Q. 20. When you rolled up the upper berths to the roof and made your seats up to sit on, what became of the slides that you had raised up?

A. Pushed in the two little springs and the slide dropped down between the seats and formed a cap to the seat back.

2600

Q. 21. Did that leave the car all open and free and clear from end to end over the seats?

A. Yes, sir.

Q. 22. When your seat and back cushions were spread flat to make the lower berth, did that leave the

wooden backs of the seats standing up straight as head and foot boards for the lower berth?

A. It did.

2601

Q. 23. And when you pulled up the slide from between the seat backs, did that slide extend the wooden seat back upward so as to make a wooden partition from the bottom berth up past the upper berth, and nearly up to the roof of the car?

A. It did.

Q. 24. When that slide was raised up, how near to the roof of the car did it reach?

A. I should judge about eight inches.

Q. 25. Was there any little sliding curtain to fill that space above the slide in your car?

2602

A. No, sir; no curtain there at all.

Q. 26. Were there any curtains to hang on a rod in front of the berths?

A. There were; every berth had two curtains.

Q. 27. Could you take the seat and back cushions right out of the car to clean them?

A. Yes, sir.

Q. 28. Did the upper berths have cushions on them?

A. Yes, sir.

Q. 29. What kept the cushions on the upper berths from sliding off when the car was running?

2603

A. There was a strip of wood around the edge of the berth that formed a stop to keep the mattresses in.

Q. 30. Were there sections each containing an upper and lower berth and partitions, as you have described, along each side of the car?

A. Yes, sir.

Q. 31. Was there a central aisle from end to end of the car?

A. Yes, sir; the sections were on each side of it.

Q. 32. Please look at defendants' Exhibit Wilson Pattern No. 4, and tell me whether there were any metal pieces shaped like it in that sleeping car, and where they were placed?

2604

A. There were; they were placed on the side of the

car at each end of the top berth for it to catch on when it was down.

2605 Q. 33. Please answer the same question as to Defendants' Exhibit Wilson Pattern No. 7?

A. There were. They were placed on the side of the car to catch the top of the head and foot boards when it was run up.

Q. 34. What was your car upholstered with?

A. Maroon plush.

Q. 35. Was there any wash-room in that sleeping car?

A. One in each end.

2606 Q. 36. Any water-closet?

A. There was a water-closet in each end, and there was a linen room in each end.

Q. 37. Did the berths have pillows?

A. Yes, sir.

Q. 38. Any pillow cases?

A. Yes, sir.

Q. 39. Who washed them?

A. My wife washed the towels and pillow cases.

Q. 40. Was the car painted inside?

2607 A. No, sir, it wasn't painted; it was finished up—varnished.

Q. 41. What kind of wood was it finished in?

A. It was finished in white ash; it was hard wood, and I polished it up with cloths.

Q. 42. What kind of wash bowls did the car have?

A. They were brass.

Q. 43. Have marble tops around them?

A. They were wood tops, covered with a composition that looked like marble.

Q. 44. Was there any carpet on the floor of that car?

2608 A. There was a rug matting that extended from one door to the other through the aisle of the car, and was covered at the ends with zinc.

Q. 45. What did you carry the water in for washing purposes?

A. There was a tank stood up in the corner of the washstand with a spring faucet.

Q. 46. Did you go into the car that run opposite to your car ?

A. Sometimes when we were switching at Peru where the trains met I went into it. 2609

Q. 47. Was it like your car ?

A. Well, I should take it to be the same kind of car. It looked the same when I went in it. I didn't see any difference in it.

Q. 48. Did you ever run any other sleeping car than the one you have been testifying about ?

A. That was the first one and the last one.

Q. 49. Did you ever see a sleeping car the sections of which were constructed like the model Defendants' Exhibit Toledo Car, I now show you, and where ? 2610

A. It is like the car that I run, that I have been testifying about.

Q. 50. Did the sliding partitions pull up out of the seat backs ?

A. This is the very old car itself. I could have penciled it off myself without seeing a model.

Q. 51. When I showed you this model there were no small pieces like those I hold in my hand, one a post and rail piece and the other a solid piece that I show you will fit on top of the sliding partitions, were there any such things as those in your car ? 2611

A. Never while I run it.

(Model removed from sight.)

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 52. Between what points did this car run on the T. W. & W., while you were with it ?

A. From Toledo, Ohio, to Lafayette, Ind.

X-Q. 53. And the other sleeping car just like it ran over the same road, did it, between the same points ? 2612

A. Yes, sir.

X-Q. 54. Did both of these sleeping cars run continuously each night between those points while you knew anything about them ?

2613 A. I laid at this end on Saturday night and left Sunday night; there was only one sleeping car over the road on Saturday night, and that came East, they ran all the other nights of the week.

X-Q. 55. The backs of the seats of your sleeping car were quite low, were they not?

A. No, sir.

X-Q. 56. Were they over two feet high?

A. They ran up pretty high, when a man was sitting on them they would run up as high as his shoulders.

X-Q. 57. Were there any holes anywhere in these boards that slid down between the backs of the seats?

2614 A. Solid boards made in panel work.

X-Q. 58. They were thick and heavy then, like a large partition?

A. No, sir; they were light, you could handle them as nice as could be, slide them up and down easily.

X-Q. 59. Did you get any pay for running on those sleeping cars?

A. Yes, sir; I got \$30.00 a month, and what was paid by the passengers for boot blacking.

X-Q. 60. What became of that sleeping car?

2615 A. I don't know what became of it, I have never seen it since I left it when it was laid up at Toledo, Ohio.

X-Q. 61. Did ladies and gentlemen sleep in that car the same as they do now?

A. Yes, sir, they did; and I had as nice a class of passengers as ever travelled over any road, and as nice a car.

X-Q. 62. What was the charge made for a whole section in that car per night?

A. One dollar seventy-five.

X-Q. 63. Was there any ladies' apartment in that car which had berths in it separate from the gentlemen's?

2616 A. Nothing made separate, but I could partition off with curtains running across the aisle; I always made it a point to give the ladies the back end of the car going both ways.

X-Q. 64. These curtains were fastened with rings to rods, were they?

A. There was a rod there and you could hook them up on the rod and take them down.

X-Q. 65. You are right certain, are you, Thomas, that there was any board that pulled up between the backs of the seats, and isn't it a fact that there was a nice curtain that hung down from the ceiling of the car to the back of the seats, so as to form a complete partition and made a head and foot division between the upper and lower berths, which curtain could be easily moved out of the way and would look pretty and wouldn't make any noise? 2617

A. There was no curtain at all; there was a solid partition that slid up; a curtain would make a poor partition between men and women. 2618

T. MASSEY.

Attest:

THOMSON H. PALMER,
Special Examiner.

Adjourned to to-morrow, December 1st,
1881, at 10 o'clock, A. M.

2619

TOLEDO, OHIO }
December 1, 1881. }

Met pursuant to adjournment.

Counsel as before.

JOSEPH PAIGE, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows:

2620

Q. 1. State your name, age, residence and occupation?

A. Joseph Paige; age, 43; residence, Toledo, Ohio, and am at present dealing in real estate.

- 2621 Q. 2. Did you not own a sleeping car line on the Toledo, Wabash & Western R. R. some years ago ?
A. I bought that sleeping car line in 1860.
Q. 3. Did you sell B. E. Bulloch an interest in it ?
A. I sold Bulloch one-fourth interest in it.
Q. 4. How many sleeping cars were running when you bought the line ?
A. Two.
Q. 5. Did you not have a third one built shortly after you bought the line and put it on in place of the oldest car ?
A. I put it on in place of the car first made.
- 5622 Q. 6. How long did those sleeping cars continue to run—that is, when did they go out of use—what year ?
A. I think in 1865 or '66, I could tell exactly by looking at my books.
Q. 7. How was the lower berth made in the first sleeping car that was run on that road ?
A. The frame of the seat was like a common car, but the cushions were attached together, so that they would lie down perfectly flat and form a lower berth.
Q. 8. Were the seat and back cushions hinged together ?
A. They were.
- 5623 Q. 9. How was the upper berth in that first car made ?
A. The upper berth of the first car was made by folding together ; they were two pieces hinged together, and by opening them flat they would form the berth ; they were fastened at the back by irons attached to the frame that entered sockets, the side towards the aisle was held by two rods hooked to staples in the roof.
- 2624 Q. 10. How did the partitions that separated these berths operate ?
A. Some board came out from the side of the car formed the partitions.
Q. 11. How were the lower berths of the second and third cars made ?
A. Car No. 2 or 3 the seats were hinged so that they would slide down flat, and the other we took the back

to form the bed between the seats. There was a rod extended from the frame of one seat to the other to hold the front edges of the cushions in the middle, and at the other edge they rested on the frame of the car inside. 2625

Q. 12. Did the seat frames in these two cars No. 2 and 3 stand back to back?

A. They set back to back, but could not be turned over; they were stationary.

Q. 13. Then two seats faced each other, did they?

A. They did.

Q. 14. And when you spread the seat and back cushions flat to make the lower berth would that leave the stationary seat frame standing up to make a head and foot board between the lower berths? 2626

A. Yes.

Q. 15. Were there any boxes under the seats?

A. There were boxes under the seats for stowing away pillows.

Q. 16. Please explain how the upper berths were made in cars No. 2 and 3?

A. They were made of two frames hinged together, and on one side was tacked heavy canvas to form the bottom of the berth to hold a mattress. There was two or three straps attached to the edge of the berth next to the side of the car, and by opening that half way so as to lie horizontally it formed a berth. It was held in place by two rods extending from this frame to the top of the seat backs, and on the other side it was held by an iron on the side of the frame fitting into a socket screwed to the side of the car. When not in use as a berth the two frames folded together and were swung up to the top of the car and were held there by a leather strap attached to the roof. 2627

Q. 17. Did you ever see in either of those three cars any castings made like Defendants' Exhibits Wilson Patterns Nos. 1 and 2, now shown you? 2628

A. Referring to No. 2, that is the one that was fastened onto the side of the car; and to No. 1 that is the casting that was fastened to the berth. I think belonging to car No. 1.

Q. 18. Did you ever see any casting in either of those cars like Exhibit Wilson Pattern No. 4, I now show you?

A. The fastenings on the side of car No. 1 were different from the fastenings of Nos. 2 and 3. It is not perfectly clear in my mind whether castings like this last pattern belonged to No. 1 or to Nos. 2 and 3. We never run but two cars at a time; when No. 3 was built No. 1 went off.

Q. 19. Was there any way in Nos. 2 and 3 of separating one upper berth from another when the upper berths were spread flat to sleep on?

A. Yes.

2630

Q. 20. Please explain what?

A. There was a panel that slid down between the back of two adjoining seats from the top of the seat to the floor, and when used as a sleeper that was raised up and held in place by two springs one on each side at the bottom and an iron groove screwed to the car at the top.

Q. 21. When these sliding panels were raised up did they go between adjoining upper berths?

A. Oh, yes; they went nearly to the roof of the car, and formed a head and foot board for the upper berth.

2631

Q. 22. Please look at the Defendants' Exhibit Wilson Pattern No. 7, and say whether these cars 2 and 3 had any castings made like it, and where?

A. They had; that held the panel to its place at the top.

Q. 23. In all three cars were there several sections of upper and lower berths along each side of the car constructed as you have described them?

A. Yes.

Q. 24. Any pillows?

2632

A. Yes.

Q. 25. Blankets?

A. Yes.

Q. 26. Please look at the model Defendants' Exhibit Fort Wayne Car, now shown to you, and say whether

you have ever seen a sleeping car, the sections of which were like this model?

A. That was car No. 1 that I have described.

2633

Q. 27. Please look at the model Defendants' Exhibit Toledo Car, and say whether or not you ever saw sleeping cars the sections of which were constructed like this model, and, if so, where?

A. That is a model of car No. 2 or 3. In either No. 2 or 3 the seat and back cushions were hinged together like this model, but which I can't say. Instead of the iron cross bar, in one of the cars there was a wooden bar that went across from seat to seat to hold the front edge of the cushions.

2634

Q. 28. Were the sections of berths in the cars 2 and 3 otherwise constructed like this model?

A. They were.

Q. 29. When I showed you the model these small pieces I now have in my hand were not with it. I put one on top of one raised partition and the other on the other, and ask you if you ever saw such things in those cars?

A. They never were with the cars.

Q. 30. Did cars 2 and 3 have loose mattresses on the upper berths like this model?

A. They did.

2635

Q. 31. Any raised edge around the upper berth to keep the mattress from sliding off?

A. Yes, sir.

(The models are now placed in their boxes out of sight.)

Q. 32. Have you any interest of any kind to be affected in any manner by the giving of your testimony in this case?

A. I am not aware of any.

2636

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 33. Were you subpoenaed to come here, or did you come voluntarily?

A. I came voluntarily.

2637 X-Q. 34. Did you have anything to do with the running of either of those three sleeping cars, or did you simply own an interest in them?

A. I owned an interest in them, and I had entire management of them.

X-Q. 35. What was the reason you destroyed the first sleeping car and substituted one like Defendants' Exhibit Toledo car in its place?

A. No. 1 answered the purpose for which it was built, but in some respects I liked No. 2 better, and so had a car built like that, or nearly like it.

2638 X-Q. 36. What was the trouble with No. 1 that it was so defective that you destroyed it and built No. 3 in its place?

A. It was not defective, and I would have continued to use it if No. 2 had not been built.

X-Q. 37. What was the trouble with No. 1 that you did destroy it?

A. After building No. 3 we had no further use for it.

X-Q. 38. What became of these two last sleeping cars?

2639 A. I sold them to the party who had the lease to put new cars on the road. I did not own the car, I simply owned the sleeping arrangements inside; the Wabash Company owned the bodies of the cars.

X-Q. 39. What parties did you sell out your interest to?

A. I don't remember their names.

X-Q. 40. What finally became of the cars and when did you see them last?

A. I do not know what became of them, and saw them last when I sold them.

2640 X-Q. 41. Who built this third sleeping car, and when and where was it built?

A. It was built in Fort Wayne. It was built soon after I bought Nos. 1 and 2. I cannot give the names of the men who built it.

X-Q. 42. Were these cars Nos. 2 and 3 changed in

any manner as to their sleeping devices while you owned them?

A. I do not remember of making any changes in them. 2641

X-Q. 43. Were the same prices charged for riding in these cars during all the time you owned them?

A. There was not much change if any.

X-Q. Did you run or operate those cars yourself at all?

A. I had the management of them and employed men to run them.

J. PAIGE.

Attest :

THOMSON H. PALMER,
Special Examiner,

2642

Adjourned to to-morrow, Dec. 2, 1881,
at 10 o'clock A. M.

TOLEDO, OHIO, }
Dec. 2, 1881. }

Met pursuant to adjournment.

Counsel appearing as before.

2643

THOMAS RANDALL, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows.

Q. 1. State your name, age, residence and occupation?

A. Thomas Randall, I am about 50 years old, residence, Toledo, Ohio, and I am a waiter.

Q. 2. Were you ever a porter on sleeping cars that were run on the Toledo, Wabash & Western R. R.? 2644

A. Yes, sir.

Q. 3. When did you commence as porter?

A. I was on the first car that came out. It was in 1859.

Q. 4. Who owned the cars at that time?

A. Mr. Hathaway.

2645 Q. 5. Did you become the porter of the second car that was put on?

A. Yes, sir; I was porter of No. 2 too.

Q 6 How long did you run on No. 1?

A. Some two or three months or more.

Q. 7. And how long on No. 2?

A. Somewhere about a year.

Q. 8. Did they put a third car on to take the place of No. 1?

A. Yes, sir; then there was two running. When No. 1 run at first there was only one.

2646 Q. 9. Tell me how the lower berths were made in the sleeping-car No. 1?

A. The backs and seats were hinged together, and laid down flat to make the bed, and rested in front on an iron bar, and the back edge rested on the side of the car.

Q. 10. What sort of a head-board did they have for the lower berth?

A. That pulled out from the side of the car.

Q. 11. How was the upper berth made in No. 1?

2647 A. Two pieces hinged together in the middle, and it came down and was unfolded out flat. It hooked at each end and on the side of the car, by hooks at each end of the berth. It was supported in front by hooks that hooked up to the roof of the car.

Q. 12. Were these hooks long rods?

A. Yes, that hooked right up to the roof to hold the front of the berth up.

Q. 13. Was there any head-board for these upper berths?

A. Yes, sir; it unfolded from the side of the car and drew across.

2648 Q. 14. In car No. 1, when the seat and back cushions that were hinged together and lay down flat to make the lower berth were set up to make the seats, what kept them from turning over?

A. They had little bolts that went into the side of the car and the seat to keep them from turning over.

Q. 15. Were there sections of upper and lower berths, like these you have described, along both sides of the car? 2649

A. Yes, sir.

Q. 16. I mean on both sides of the central aisle?

A. That is so.

Q. 17. How were the lower berths made in car No. 2?

A. The seat and back cushions were hinged together and pulled down flat, and rested on a bar in front, and on the side of the car at the back.

Q. 18. Were the seat frames stationary in this car?

A. Yes, sir; and set back to back.

Q. 19. Did each two seats face each other? 2650

A. Yes, sir.

Q. 20. Couldn't you take these cushions right out to clean them?

A. Yes, sir.

Q. 21. Any boxes under the seats?

A. Yes, there were boxes under the seats to put the pillows in.

Q. 22. What made the head boards of the lower berths?

A. The backs of the seats. When you pulled down your cushions the backs of the seats would stand there stationary. 2651

Q. 23. How were the upper berths made in car No. 2?

A. They were two pieces hinged together in the middle and folded together, and were put up to the roof of the car.

Q. 24. When they were doubled together and turned up to the roof of the car, how did you keep them up there?

A. We had a little strap at each end that held them up there. 2652

Q. 25. That was so in car No. 1 too, wasn't it?

A. Yes, sir.

Q. 26. Did the upper berths in cars Nos. 1 and 2, have mattresses on them?

A. Yes; they had thin mattresses loose—two laid side by side.

2653 Q. 27. What kept the mattresses from slipping off when the cars were in motion?

A. There was a little piece around the edge that stuck up.

Q. 28. In car No. 2, was there any head board for the upper berth?

A. Yes, sir; It came up from out of the backs of the seats.

Q. 29. How high up did it go?

A. It went up a good ways above the upper berths, and near up to the roof, and made a head board between the upper berths.

5654

Q. 30. When it was raised up what kept it from falling down?

A. It had springs on each side to hold it up, and there was a little piece on the side of the car to keep it steady.

Q. 31. Could you let these head boards down in the day time?

A. Yes, sir; let them right down, they went right between the backs of the seats to the floor.

5655

Q. 32. When your head boards were let down between the backs of the seats and your upper berths were folded up and fastened to the top of the car, was there a clear space so that you could look right over the tops of the seats from one end of the car to the other?

A. Yes, sir.

Q. 33. Was there any curtains?

A. There were curtains to go in front of the berths; they were long curtains, and hooked on rods.

Q. 34. In car No. 2, what held the back of the upper berth, when it was unfolded flat to sleep on?

2656 A. There were two hooks on the back side of the car that the berth hooked onto.

Q. 35. What supported the front of the upper berth?

A. Two legs that came down and set on the backs of the seats.

Q. 36. Didn't these legs set into little metal holes?

A. Yes, sir; sockets in the top of the seat arms.

Q 37. When you were going to put up your upper berth, what did you do with these two legs? 2657

A. The legs turned up to the front edge of the berth and fastened there.

Q. 38. Did you go into car No. 3?

A. I saw that car, but didn't run on it.

Q. 39. Wasn't it just like No. 2?

A. The same as No. 2, as far as I could see.

Q. 40. Did you have pillows for the berths?

A. Yes, sir.

Q. 41. Blankets?

A. Yes, sir.

Q. 42. Any pillow slips? 2658

A. Yes, sir.

Q. 43. Who did the washing of the linen for your car?

A. My wife washed them for a while, and then they had it done in Lafayette.

Q. 44. Please examine the model I now show you, marked Defendants' Exhibit Fort Wayne Car, and say whether you ever saw a sleeping car the sections of which were constructed like it, and where?

A. Yes; that is just like the first car I was porter on on the Toledo, Wabash & Western R. R. 2659

Q. 45. Please examine the model I now show you, marked Def'ts' Exhibit Toledo Car, and say whether you ever saw a sleeping car the sections of which were constructed like it, and where?

A. Yes, sir; it is just like the second car I was porter on on the Toledo, Wabash & Western R. R.

Q. 46. Do you remember the straps attached to the back of the upper berth and to the roof, which the upper berth rolled up in?

A. Yes, sir. 2660

(This Exhibit Model Toledo Car, when shown to witness, did not contain the detached removable pieces which fit on the sliding partitions.)

(Models removed from sight.)

2661 Q. 47. Did they charge anything for using the berths in these cars?

A. Yes, sir; I think the lower berth was a dollar, and seventy-five cents for the upper berth.

Q. 48. (No question).

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 49. Were you subpoenaed to come up here and give this testimony, or did you come of your own accord?

2662 A. I came of my own accord. Mr. Munson asked me to come.

X-Q. 50. You had seen these models before you began giving your testimony, hadn't you?

A. Yes, sir.

X-Q. 51. How far apart were the backs of the seats in the two last sleeping cars?

A. They were far enough apart to form a bed.

X-Q. 52. Were there any curtains running up from the backs of these seats to the roof of the car?

A. No, sir.

2663 X-Q. 53. How far did this upper berth hang down from the roof of the car when it was strapped up?

A. When it was strapped up it was tight to the roof of the car.

X-Q. 54. Between what cities did that car run at night, the car you were on?

A. It ran from Toledo, Ohio, to State Line, Indiana.

X-Q. 55. Who was your conductor while you were porter on car No. 2?

2664 A. I ran with Hathaway and Cobler on the first car and with Roberts on the second car.

X-Q. 56. That first sleeping car you were on was a mighty poor kind of a car, wasn't it?

A. It was rather. It wasn't a very good one; it was commonly built.

X-Q. 57. And they tore it up because it was no good as a sleeping car, didn't they?

A. They put it away and got a better one ; that's all I know about it.

X-Q. 58. Are you right certain that upon that sleeping car, on which you were porter, there were any boards that pulled up from between the backs of the seats?

A. Yes, sir; there was boards that slipped up from between the backs of the seats.

Witness : THOMAS X RANDALL. 2666
his
mark

THOMSON H. PALMER,
Special Examiner.

Adjourned to to-morrow, December 3d,
1881, at 9 o'clock, A.M.

TOLEDO, OHIO, }
December 3d, 1881. }

2667

Met pursuant to adjournment

Counsel appearing as before.

JACOB ROMEIS, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows :

Q. 1. Please state your name, age, residence and occupation?

A Jacob Romeis, age 46, residence Toledo, Ohio, 2668
and I am depot master of the Toledo, Wabash, St.
Louis and Pacific R. R.

Q. 2. Are you not the mayor of this city?

A. I am, and have been for nearly three years.

Q. 3. Were you not in former days a conductor upon

the road you have named while it was known as the Toledo, Wabash and Western R. R. ?

2669

A. I was.

Q. 4. When did you first become conductor of a train on that road ?

A. I became a regular passenger conductor on that road in the year 1863, about the month of May ; it was April or May.

Q. 5. At that time were there any sleeping-cars in use on that R. R. ?

A. There were.

Q. 6. How many ?

2670

A. Two running opposite each other.

Q. 7. How long did those two remain in use ?

A. To about 1865 or '66 ; there were sleeping-cars in use on this road before I became conductor ; these two cars were running on the road before I became conductor.

Q. 8. Did you collect the sleeping-car fares in those cars ?

A. I did ; that is, the porter actually collected the money from the passengers and turned it over to me.

Q. 9. Then you were for a period of two to three years familiar with these sleeping cars ?

2671

A. Yes, I was.

Q. 10. Please explain how the lower berths were constructed ?

A. The seats faced each other, each two seats were back to back. The seat and back cushions were hinged together ; those belonging to two seats were pulled towards each other, so as to lie flat and make the lower berth, the backs of the seat frames making the head and foot board for the lower berth. There was a bar at the front extending from seat to seat to support the edges of the cushions next to the aisle.

2672

Q. 11. When the seat and back cushions were spread flat did that bring the back cushion over the seat frame and the seat cushion over the foot space between the two seats ?

A. Yes, sir.

Q. 12. Were there any boxes under the seats?

A. There were, to keep the pillows in.

Q. 13. Could the seat and back cushions be lifted out bodily? 2673

A. Yes, sir.

Q. 14. Please describe how the upper berths were constructed?

A. The upper berths were in two parts hinged together, each with a separate mattress on it. In the day time the upper berths were folded together and turned up to the roof of the car and fastened there by leather straps.

Q. 15. Were their mattresses loose?

2674

A. They were.

Q. 16. What kept the mattresses of these upper berths from falling when the berths were doubled together and turned up to the roof?

A. They were kept there by three straps that were fastened to the side of the car, which in doubling the berths lapped against the cushions and confined them?

Q. 17. When the upper berths were detached and lowered down and unfolded to make the upper berths, what supported them?

2675

A. When they were lowered down the backs were temporarily suspended by these straps. Then the back edge of the berth was lifted onto hooks at the two corners of the berth, the hooks were fastened to the side of the car. The front edges of the upper berths were supported at each end by an iron that turned down and entered sockets in the top of the seat arms and stood at an angle to brace the berth each way.

Q. 18. Were there any head and foot boards for the upper berths?

A. There were.

2676

Q. 19. Please describe them?

A. There was a board raised up from between the seat backs, which board had a cap on its top to take hold of. It went up above the upper berth and near, but not quite, to the roof of the car. It was held up

2677 by a spring at the front edge of this board, which when it was raised up to its full height sprang out and rested on the top of the seat frame.

Q. 20. Was there any such spring at the back edge?

A. I can't say as to that.

Q. 21. Was there anything to stop this sliding board to prevent its being pulled clear out when raised?

A. There was a casting fastened to the side of the car into which the cap piece on the sliding board went.

2678 Q. 22. Did these sliding boards when raised up to near the roof and above the upper berth each form a head and foot board between adjoining upper berths?

A. They did.

Q. 23. When the sliding boards were raised up to near the roof of the car did they not in connection with the stationary seat backs form a continuous division between berths extending from the lower berth past the upper berth and near to the roof of the car?

A. They did.

2679 Q. 24. When the upper berths were raised up to the roof of the car and the sliding head boards were let down, was there a clear, unobstructed and open space over the seat backs from one end of the car to the other?

A. There was.

Q. 25. Was there sections of berths constructed like the one you have described along each side of the car?

A. There were sections of such berths along each side of the car with a passageway between them in the center.

2680 Q. 26. Please examine the model marked Defendants' Exhibit Toledo Car, and state whether you ever saw a car the sections of berths of which were constructed like it and where?

A. It is constructed like the sleeping-cars I have described as being run in the Toledo, Wabash & Western R. R. while I was conductor there.

Q. 27. When I showed you this model the small de-

tached pieces I now produce were not with it, I now place one on top of one sliding partition and the other on top of the other sliding partition and ask you whether you remember any such things in the sleeping cars themselves? 2681

A. I have no recollection of any such things.

CROSS EXAMINATION RESERVED.

Adjourned to Tuesday, Dec. 6th, 1881,
at Southern Hotel, St. Louis, Mo.

2682

SOUTHERN HOTEL, ST. LOUIS, MO., }
December 6th, 1881. }

Met pursuant to adjournment.

Present.—For Compl'ts., C. K. OFFIELD, Esq.
for Def'ts., H. T. MUNSON, Esq.

JOHN F. GILBIRDS a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows: 2683

Q. 1. State your name, age, residence and occupation?

A. John F. Gilbirds, age 43, residence St. Louis, Mo., and occupation dealer in carriages.

Q. 2. Were you not formerly station-agent at Logansport, Indiana, for the Toledo, Wabash and Western R. R., and if so, when did you assume charge there?

A. I was. I assumed charge early in January, 1860.

Q. 3. Had you not prior to that time, as conductor for said road, run a train of cars in part composed of a sleeping car? 2684

A. I had.

Q. 4. Please describe the inside sleeping arrange-

ment of that sleeping car, beginning with the seats and including the lower berths?

2685

A. The seat frames were stationary and placed back to back, two seats facing each other. The seat and back cushions were hinged together and made movable; when moved to lie horizontal and supported by a rod or bar underneath they formed a lower berth.

Q. 5. Where did this rod extend from?

A. From frame to frame of the stationary seats at the front.

Q. 6. What supported the back of the cushions?

A. A sill or projection on the side of the car.

2686

Q. 7. When the cushions were laid flat to form a lower berth did the berth have any head and foot boards?

A. Yes, the backs of the stationary seat frames formed head and foot boards.

Q. 8. Please describe the upper berths?

A. They were wooden platforms, two hinged together, suspended at the side of the car by straps that were attached to the back edge of the platform and near the top of the car at the side; these platforms were hinged together so as to fold together and turn up to the roof, and were there fastened up out of the way, the straps I spoke of holding the loose mattress in place.

2687

Q. 9. How many mattresses were there?

A. Two, one on each platform; and when up to the roof of the car one mattress was on the top and the other underneath.

Q. 10. How was the upper berth fixed for sleeping purposes?

A. It was let down and unfolded to lie horizontally and its back edge was fastened to the side of the car by hooks at or near the corners. At the front it was supported at each end by a metallic brace or leg which went into sockets in the seat arms close to the back at the top.

2688

Q. 11. Was there any division between these upper berths when arranged to be slept on?

A. There was a wooden partition or slide that raised from between each two seat backs that went within six or eight inches of the roof and was held up by two springs fastened to the sliding partition at its edges and near the bottom which sprung out and rested on the seat back. 2689

Q. 12. Did these sliding partitions when raised continue the stationary backs of the seat frames upwards between and past the upper berths and near to the roof of the car?

A. They did.

Q. 13. What was done with these partitions during the day use of the car?

A. They were lowered between the seat backs out of the way. 2690

Q. 14. Were there a number of such sections made of upper and lower berths and sliding partitions along each side of the car?

A. There were.

Q. 15. With a central aisle running through the car between these sections?

A. Yes.

Q. 16. How long did this car run as a sleeping car before you became agent at Logansport? 2691

A. To the best of my recollection the car was on the road before that three or four months.

Q. 17. Was there not a second sleeping car like the one you have described put into use on that R. R. shortly after you became its agent at Logansport, which car run opposite to the car you have described?

A. There was.

Q. 18. How long were these two sleeping cars kept in use upon the road as sleeping cars?

A. I am sure they ran three or four years, and I think longer. 2692

Q. 19. Did you not frequently run as conductor of a train having the first sleeping car you have described attached to it before you became agent at Logansport?

A. I did.

Q. 20. And after you became agent at Logansport did you not occasionally run as conductor of a train having one or the other of these sleeping cars attached to it?

A. I did.

Q. 21. And after you became agent at Logansport during the three, four or more years that these sleeping cars were in use upon said railroad did you not frequently ride in them from Logansport to Toledo and return, and thus become familiar with their construction?

A. I did.

Q. 22. You have seen them arranged both as day and night cars many times, have you not?

A. I have.

Q. 23. And seen them changed from night to day cars and vice versa, have you?

A. Yes; a great many times.

Q. 24. Any special circumstance making you remember the sliding partitions particularly?

A. Yes; I remember on several occasions moving these sliding partitions down between the stationary seat backs.

Q. 25. When the upper berths were fastened to the roof of the car and the sliding partitions were lowered between the stationary seat backs was there an unobstructed and clear space over the seat backs from end to end of the car?

A. There was.

Q. 26. Were there any boxes for the storage of materials in those cars, and where?

A. Underneath each seat.

Q. 27. When the seat and back cushions were spread flat did the seat cushions overlie the foot space and the back cushions overlie the said boxes?

A. They did.

Q. 28. Please examine the model marked Defendants' Exhibit Toledo Car now shown to you, and say whether you ever saw a sleeping-car the sections of which were constructed like it, and where?

A. I have ; it is constructed like the cars I have testified about as being run on the Toledo, Wabash & Western R. R. 2697

Q. 29. I hold in my hand detachable pieces which were not with the model when you were just asked about it, which pieces I place upon the top of the raised partitions and ask you to state whether the cars were fitted with any such devices ?

A. There were no such pieces on either of the cars I have described.

Q. 30. Do you recollect in those cars any such socket pieces as this model is provided with attached to the wall of the car to receive the back end of the sliding partitions when raised ? 2698

A. I do.

(The model is removed from sight.)

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 31. Where is your place of business in this city ?

A. 105 South 3rd St.

X-Q. 32. How long have you done business in the city of St. Louis ? 2699

A. Six years.

X-Q. 33. Did you see the model you have testified about before you gave your testimony ?

A. I did.

X-Q. 34. Was your recollection very distinct about the construction of these old cars before you saw the model ?

A. In small details it would be, the things I could give reasons for recollecting.

X-Q. 35. Have you any reason for recollecting that these movable partitions went up more than two or three inches above the upper berths when those berths were in position for sleeping purposes ? 2700

A. Yes sir ; I have laid in the upper berths and they were above the pillow and my head ; and other rea-

sons are that I have noticed when I came in the car that they were six or eight inches from the roof.

2701 X-Q. 36. But that is a matter entirely of recollection, is it not?

A. Recollection, yes sir.

X-Q. 37. Were either of these sleeping-cars ever changed in any respect as to their sleeping devices while used as sleeping-cars?

A. Not to my knowledge and recollection.

X-Q. 38. Were you subpoenaed to come here to-day, and if so, who subpoenaed you, and what kind of a document was it?

2702 A. I was. The subpoena was handed me by a gentleman; I don't know what kind of a document it was. I left it on my desk as an excuse for not obeying another subpoena which I had reason to believe would be shortly served upon me.

J. F. GILBIRDS.

Attest:

THOMSON H. PALMER,
Special Examiner.

Adjourned to Dec. 7, 1881, 10 o'clock,
A. M. at Lafayette, Indiana.

2703

LAFAYETTE, INDIANA, }
December 7th, 1881. }

Met pursuant to adjournment.

Counsel as before.

2704 DARWIN A. COLLINS, a witness produced by and on behalf of Defendants, having been duly sworn, testified as follows:

Q. 1. State your name, age, residence and occupation?

A. Darwin A. Collins, 49 years old, residence Lafayette, Indiana; I am Vice-President of the Board of Trade in that city. 2705

Q. 2. Were you not formerly civil engineer of the railroad long known as the Toledo, Wabash and Western R. R.?

A. I was; from the year 1860 for nearly 10 years

Q. 3. Were there not two sleeping-cars running on opposite trains on that railroad for a number of years from the time you became its civil engineer, as stated?

A. Yes.

Q. 4. Did you not frequently ride in one or the other of them?

A. I did. 2706

Q. 5. And from your habits as an engineer did you not examine their structure and understand it?

A. I did in a general way, but not perhaps in all the details; I understood the general plan and operation of the sleeping devices.

Q. 6. How were the seats constructed and arranged in those cars?

A. The seats were arranged back to back, and so that two would face each other.

Q. 7. Were the seat frames stationary? 2707

A. They were.

Q. 8. How did they convert them into a lower berth?

A. The back cushion of the seats and the seat cushions were alike and were attached together so that they worked as if hinged together, and there was a movable piece that was put across from seat to seat next to the aisle, and on that and I think on the top of the truss plank on the side of the couch, or the truss plank with a piece put on its top to raise it a little higher, the seat cushions were supported when the two cushions of opposite seats were drawn out and lay flat to form a lower berth; when the cushions were drawn out for berths the back cushion occupied the place of the seat cushion in the day time and the seat cushion lay over the foot space. 2708

Q. 9. How was the upper berth made?

2709 A. The upper berth was made of two frames hinged together in the middle, with two loose cushions, one for each frame. There was a strap that was fastened to the top, or near the top, at the side of the car, and these two frames were folded together, and the strap put around them and fastened to the top of the car holding the frames and cushions to or near the top of the car. To make the berth for sleeping I unfold the frames and bring them down horizontal; on the side of the frame next to the side of the car, or on its bottom edge, there were a couple of hooks or catches which entered into sockets fastened to the side of the car at the proper height. That was the attachment that held 2710 the back of the berths. The front of the berth was held in position for sleeping by two legs, you may call them, which legs were attached to or near the end of the cushion frame next to the aisle, and rested in sockets attached to the seat arms. There was a division between the berths crosswise of the car and divided the berths from each other. In the day time these partitions slid down between the backs of the seats, and in the night time were raised up and were held in position at night by little springs that came out 2711 from the edge of the partition and rested on the top of the seat backs. There was some little lock on the side of the car that held the partitions at the top.

Q. 10. Did these sliding partitions when raised reach nearly to the roof of the car?

A. Yes, nearly; my recollection is that there was a space above them, and that there was a little curtain or something to fill that space.

Q. 11. But when raised up they extended above the upper berth to form the division between adjacent berths, did they not?

2712 A. They did.

Q. 12. And when so raised up, did not these sliding partitions form a continuation of the stationary seat backs upwards past the upper berths and nearly to the roof of the car?

A. Practically they did form a continuation of the seat backs in that way.

Q. 13. Were there not a number of such sections of berths along each side of the car? 2713

A. There were, on each side of a central aisle.

Q. 14. When the upper berths were folded up and fastened to the roof of the car, and the sliding partitions were let down into the seat backs, in the day use of the car, did not the car present a clear, unobstructed space from end to end over the seat backs?

A. It did.

Q. 15. Were there any boxes under the seats to put pillows in?

A. There were. The space under the seats was cased up permanently to make receptacles. 2714

Q. 16. Have you ever seen a model purporting to be like these cars

A. I never have.

Q. 17. Were the two cars alike?

A. I think they were. There may have been some little details different, but they were substantially alike.

Q. 18. I now show you a model marked Defendants' Exhibit Toledo Car, and ask you whether you ever saw a sleeping car constructed and operating like this model, and where? 2715

A. It is constructed the same as the cars I have been testifying about.

Q. 19. Now, having seen the model, do you recall the caps attached to the side of the car near the roof to catch and hold the back ends of the sliding partitions?

A. I do.

Q. 20. Was there a spring at the back as well as the front edge of these partitions to support them when up?

A. There was.

Q. 21. Now having seen the model, I ask you whether the straps fastened to the side of the car and to the back edge of the rear platform into which the two platforms fold and which straps confine the lowermost cushion when the berths are fastened up to the roof by 2716

the front strap, was the construction in the cars themselves?

2717 A. Yes. That was the construction.

The model when shown witness was without the detachable pieces which fit between the top of the sliding partitions and the roof of the car when in position for sleeping.

(Said model is now placed in its box and the witness is submitted for cross-examination.)

5718

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 22. Were you subpoenaed to give your testimony in this case, or did you attend voluntarily?

A. I was not subpoenaed. The counsel in the case attended at my office voluntarily.

X-Q. 23. Do you know what has become of those two sleeping cars?

A. I do not, sir.

5719 X-Q. 24. How long after they left the road was it before any other sleeping cars were put on in their place?

A. I wouldn't undertake to say definitely, but it must have been from two to four years.

X-Q. 25. You have nothing to testify from except your general recollection?

A. No, sir; I am testifying from my memory of the cars.

RE-DIRECT EXAMINATION.

2720 R-D-Q. 26. Have you any interest of any kind in this controversy?

A. None whatever. I have ridden in both the upper and lower berths in the cars.

D. A. COLLINS.

Attest:

THOMSON H. PALMER,
Special Examiner.

2721

Adjourned to Toledo, Ohio, December
8th, 1881, at 10 o'clock A. M.

TOLEDO, OHIO. }
December 8th, 1881. }

Met pursuant to adjournment.

Present.—For Compl'ts., H. S. TOWLE, ESQ.
For Deft's., H. T. MUNSON, ESQ.

2722

JACOB ROMEIS, submitted for cross-examination.

CROSS-EXAMINATION BY MR. TOWLE.

X-Q. 28. Were you subpoenaed to come here as a witness, or did you come voluntarily at the request of the counsel for the defendants?

A. I was not subpoenaed, I came at the request of Mr. Munson.

X-Q. 29. Have you any knowledge as to what has become of these old cars, or either of them?

2723

A. I have not, except they were taken off, put in the shops and the Sanderson cars took their place, in '65 or '66.

X-Q. 30. Please state how long it was after these first sleeping cars were taken from the road before other cars intended for sleeping purposes were used?

A. I am not able to swear to that positively, but I am certain the road was not without sleeping cars.

X-Q. 31. Your recollection, then, as to when these sleepers were actually taken off, and as to the time when others were introduced, is somewhat indistinct, is it not?

2724

A. It would be as to date.

X Q. 32. Have you anything to testify about other than your general recollection?

2725 A. It is general recollection of the cars.

RE-DIRECT EXAMINATION BY MR. MUNSON.

R-D-Q. 33. You have been testifying from your memory of the sleeping cars themselves, have you not?

A. Yes, sir.

JACOB ROMEIS.

Attest:

2726 THOMSON H. PALMER,
Special Examiner.

Adjourned subject to notice.

2727

2728

2729

U. S. CIRCUIT COURT,

NORTHERN DISTRICT OF ILLINOIS.

GEO. M. PULLMAN AND PULLMAN'S
PALACE CAR CO.,

versus

THE N. Y. CENTRAL SLEEPING CAR
COMPANY, AND WEBSTER WAGNER.

In Equity.

2730

Further testimony taken on behalf of the defendants' before Thomson H. Palmer, Special Examiner, pursuant to notice, under the 67th Rule in Equity as amended.

PALMER HOUSE, CHICAGO, ILLS. }
January 6th, 1882. }

Met pursuant to notice.

2731

Present.—For Compl'ts., C. K. OFFFIELD, ESQ.
For Def'ts., M. B. PHILIPP, ESQ.

Adjourned to to-morrow, January 7th,
1882, at 10 o'clock A. M.

PALMER HOUSE, CHICAGO, ILLS., }
January 7th, 1882. }

Met pursuant to adjournment.

2732

Counsel appearing as before.

NATHAN M. WHEELER, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows :

Q. 1. State your name, age, residence and occupation ?

2733 A. Nathan M. Wheeler, age 54 years, residence Chicago, Ills., and occupation Superintendent of Construction of the N. Y. C. Sleeping Car Co., and also Assistant Supt. of said Co.

Q. 2. Were you ever employed by the Chicago & Rock Island R. R. Co., afterwards the Chicago, Rock Island and Pacific R. R. Co. ?

A. Yes, sir.

Q. 3. When did you enter the employ of that Co.—how long did you remain in the employ of that Co., and what positions did you occupy while in such employment ?

2734

A. The 18th day of October, 1852, as conductor, and remained as conductor, with the exception of a short interval, nine years ; the next position that I occupied was depot master for the Chicago & Rock Island and the Michigan Southern & Northern Indiana, afterwards the Chicago, Rock Island and Pacific R. R., and the Lake Shore & Michigan Southern, which position I occupied from September 20, 1862, till January 1st, 1879.

Q. 4. Did you ever have an arrangement with the Chicago and Rock Island Co., afterwards the Chicago, Rock Island and Pacific R. R. Co., for the running of sleeping-cars on the road of that Co. while you continued to hold the position of depot master, and if so, when did that arrangement begin, and how long did it continue ?

2735

A. I did ; it began December 17, 1862, and continued until May, 1869.

Q. 5. State generally what that arrangement was, and whether it was in writing or not ?

2736 A. It was a verbal understanding with John F. Tracy, General Superintendent of that Co. that I was to keep up the inside of the sleeping-cars of that road ; I to pay all expenses of the interior fittings, conductors and porters for them ; I to receive all the fares for berths, and to pay an annual rent to the Co. of \$2,000

up to about 1866, when I paid \$3,000 per year for the balance of the time.

Q. 6. State generally how the sleeping-cars were constructed that were in use on the road when you entered into the arrangement with Mr. Tracy on Dec. 17, 1862? 2737

A. There were two coaches fitted up with the Myers & Furniss sleeping-car patent. Each car had a central passage-way through the main body of the car with five sections of berths on either side of the car, each of said sections consisting of two double berths, an upper and a lower one. The lower berth was formed by drawing the backs of the seats back on slotted back arms to make the distance between the backs about six feet. There was two hinged boards on each seat frame which folded over and rested on an iron bar swinging from one seat frame to the other for the boards to rest on on the front side of the berth, and on the back side they rested on the seat frames and the truss plank. Each seat had a doubled cushion which were fastened together with a piece of webbing, and when unfolded would fill the space between the backs of the seats resting on the boards. A mattress was then laid on the cushions of which formed the lower berth. 2738

The upper berth of each section was made in the form of a tray, being about six feet long and three feet wide and five inches deep, which contained a mattress. This upper berth was made to move up and down on four rods, two in front that ran from the floor to the ceiling, and two on the back side that ran from near the upper side of the car down to just below the tops of the windows, and these rods were secured to the side of the car with castings and nuts on the ends of rods, for the back edge of the berth to rest on when down. The rods in front had a nut corresponding with the height of the castings on the back rods, which was held there with a set screw; the whole berth frame resting on the nuts in front and castings on the back side, to sustain the weight of the berth and passenger occupying it. The berth had four castings, two attached to the front side 2739

2741 and two to the back side, with holes through them to slide the berth up and down on the four rods. The berth when put up for the day was hauled up to the roof of the car by pulleys and ropes, and was there held by four steel spring fastenings, with a slot or hole in one end with four pins, two on each side of the berth that entered the slots and there held the berth during the day. The mattress for the lower berth was placed on the upper berth before it was put up. A board hinged to the inside of the upper berth, could be thrown up at night when the berth was down and there held by an iron hook to form the partition between two adjoining upper berths. This head board lay down flat in the tray or berth during the day, the mattresses being laid on top of it. The two lower berths were divided by a curtain tacked to the upper inside edge of the end of the tray, which, when the upper berth was lowered down, would drop down between the backs of the seats of the two adjoining lower berths.

Q. 7. State whether or not a third car was fitted up with the same arrangements of berths, and if so, about when?

2743 A. A third car was fitted up in the same manner in the winter of 1862 and '63.

Q. 8. Did you find any objection to these sleeping cars, and if so, what?

A. I did; I objected to the rods for the berths to slide up and down on, as they looked unsightly in the car.

Q. 9. How many sleeping cars did you have under your arrangement with Mr. Tracy in the early part or Spring of 1864?

2744 A. Three all of the construction that I have described.

Q. 10 State whether or not these three cars were altered to obviate the unsightly appearance to which you have referred, and how they were altered, if at all?

A. They were altered. The lower berth arrange-

ments were left as they were; the rods were all removed, and the upper berths were hinged to the sides of the car by means of strap hinges at the upper rear edge of the berths, and were suspended from the upper edge of the side of the car with two flat iron bars one end attached to the outer corner of the berth, the upper bar being slotted and the upper end of the lower bar attached to this bar by means of a pin to allow the lower bar to slide into the upper bar for the purpose of shortening the arms, for the purpose of putting the berth up at an angle. We then raised up the front of the berth to or near the ceiling of the car and it was there held by two steel springs with a slot or hole in one end to receive the pin on each end of the berth which held the berth containing the bedding in a slanting position during the day time, thus putting it out of the way of passengers. 2745 2746

Q. 11. Near which end of the upper berth, the front or the rear, were the pins that went into holes in steel springs to hold the berth up in a slanting position?

A. In the front end near the aisle.

Q. 12. Where were the two bars located with respect to the end of the berth?

A. They were attached to the end of the berth near the front edge. 2747

Q. 13. Two bars at each end of each berth?

A. There were, yes.

Q. 14. Was there anything attached to the roof or carlines of these reconstructed cars, and for what purpose?

A. There was a cornice ran the whole length of the car on either side to conceal the front edge of the berth when placed in the slanting position.

Q. 15. When were the berths placed in the inclined position? 2748

A. During the day time.

Q. 16. Was the space utilized for any purpose when they so stood in the slanting position, between them and the side and roof of the car?

A. Yes, for the purpose of putting away the bedding for the two berths of the section during the day.

2749

Q. 17. Where were the steel strips secured that held the berths in the inclined position?

A. Secured to the roof of the car just inside of the cornice.

Q. 18. How could the steel strips be released from the pins when the berths were to be lowered?

A. There was room enough between the ends of the berths to put your hand in and spring them off from the pin, and then holding the berth with one hand in the center, spring them off of the opposite end.

2750

Q. 19. How were the upper berths divided off, if at all, when they were lowered to a horizontal position to be used as berths nights?

A. The same as they were before the cars were altered over?

Q. 20. When were these three cars altered in the manner you have described?

A. During the summer of 1864.

Q. 21. Where were they used so altered, and when?

A. Running between Chicago, Ill., and Davenport, Iowa, on the Chicago & Rock Island R. R., during the summer of 1864, for the balance of that year, and down to about 1868 or '69.

2751

Q. 22. Was any charge made for the upper and lower sleeping berths before they were altered, during the summer of 1864 and after they were altered, and what price was charged and received for them?

A. There was. During the periods of 1862 and up to 1868 or '69 charges were made as follows: a dollar was charged, at first, for each berth, upper and lower; afterwards a dollar and twenty-five cents, and subsequently a dollar and a half. I cannot give the dates at which the prices were altered.

2752

Q. 23. After examining the model before you, state what it represents?

A. It represents two sections of each of the sleeping cars that I have described as reconstructed and altered

in 1864, and used as I have stated on the Rock Island Road.

Q. 24. Were the other berths in each of the three sleeping cars as they were altered in the summer of 1864 the same as or different from what is illustrated by this model? 2753

A. They were all the same as illustrated in this model.

Q. 25. How many sections were there in each of these three cars when altered in the summer of 1864?

A. Ten; five on each side of a central passageway.

Q. 26. How many upper berths were there constructed and arranged for operation, as shown in that model, in each of the three cars as they were altered in the summer of 1864? 2754

A. Ten in each car.

Q. 27. Where are those three cars now, if you know, that were altered, as described by you, in the summer of 1864?

A. One of them was destroyed by the Rock Island Road, and the bedding utilized in new sleepers, and the old car was built over as a passenger coach. Two of the cars were sold to a road whose name I don't remember, and went to St. Louis. I have no knowledge of where they are now. 2755

Model referred to in Questions 23, 24 and 26, filed in evidence on behalf of the defendants, and the same is marked Defendants' Exhibit Rock Island Car. Thomson H. Palmer, Special Examiner.

RECESS.

CROSS-EXAMINATION BY MR. OFFIELD.

2756

X-Q. 28. You are now connected with and directly in the pay and employment of the defendants in this case, are you not?

A. Of the New York Central Sleeping Car Co.

X-Q. 29. And that company is the corporation defendant here, is it not?

2757

A. I so understand it.

X-Q. 30. You had the entire control of the operation and management, so far as the sleeping devices were concerned, of those sleeping cars you ran on the Rock Island Road, between 1862 and 1869?

A. Yes.

X-Q. 31. Between what points did those cars run during and between the dates last given?

A. Chicago, Ills., and Davenport, Iowa.

X-Q. 32. Did they run alternately each night?

2758

A. One each way every night.

X-Q. 33. Were these cars all fitted up and ready for use, under the Myers & Furniss patent, when you took charge of them in 1862?

A. They were.

X-Q. 34. The only objection which you had to the arrangement of the upper berths constructed under the Myers & Furniss patent, on the Rock Island Road, was on account of the rods looking unsightly, was that it?

A. That was the main objection.

2759

X-Q. 35. Were the rods in the way at all—inconvenience any person?

A. The rod on the front side of the berth was somewhat in the way, as it came in front of the seat-arm, and was attached to the seat-arm.

X-Q. 36. The upper berths in those sleeping cars before they were changed, were perfectly safe and convenient, and there was no necessity for any change on that account, was there?

2760

A. The berths were perfectly safe, but the contrivance was such that they worked very hard and were very unhandy to manage and put up, as they had to go up bodily with the bedding on them; if the fastenings were not perfectly secure, they were in danger of falling down.

X-Q. 37. Well, what harm would have come of it if they had fallen down?

A. If passengers were sitting in the section and the berth should fall down they would be liable to be injured. 2761

X-Q. 38. What was done with this rope and pulley, and this hoisting apparatus which operated that upper berth, in the day time and at night?

A. The rope, after the berth was fastened up, lay on top of the bedding; the pulleys were stationary; at night the ropes were just long enough so that they remained taut out of the way when the berth was ready to be occupied.

X-Q. 39. How many men did it usually take to heave on those ropes and get one of those berths up against the roof of the car? 2762

A. One man could put them up, but usually the conductor and the porter put them up together.

X-Q. 40. You personally attended to and ordered the fitting up of that third car in the winter of '62 and '63, like or with the same arrangement with the other two, did you not?

A. Yes.

X-Q. 41. In the winter of '62 and '63 were you familiar with the different kinds of sleeping-cars then running on the different railroads in this country? 2763

A. Not to any extent.

X-Q. 42. How long after the winter of '62 and '63 was it before you became familiar with the different sleeping-cars run on the different roads in this country?

A. It was three or four years before I became more familiar with them.

X-Q. 43. Was all three of these cars altered or changed as to their upper berth construction as you have described, at the same time?

A. No sir; but one at a time. 2764

X-Q. 44. How long was it after you began or made the change in the first car before the change was completed in the last or third car?

A. I can't give the time definitely, but it was done during the summer and fall of 1864.

2765 X-Q. 45. Did you determine on changing the upper berths of all three of those cars at the same time?

A. Yes ; if the first one worked satisfactorily.

X-Q. 46. And you was perfectly confident, wasn't you, that the first one would work satisfactorily before you completed it?

A. I was.

X-Q. 47. You considered it a very great improvement, did you not, this changing and altering the upper berths in those three cars from the old way in the Myers & Furniss construction to the manner you have described?

2766 A. I considered it an improvement and a convenience.

X-Q. 48. Did your change or alteration in the construction and arrangement of the upper berths in those three cars remedy all the defects and objections to the arrangement and operation of the Myers & Furniss upper berths?

A. As much as could be for that style of a car.

2767 X-Q. 49. You fix the summer of 1864, as I understand you, as the time you first took out the Myers & Furniss apparatus and substituted the arrangement of the upper berths in those three cars. Will you please state whether you have any data or memorandum by which to fix this date, or whether it is from recollection alone?

A. No particular memorandum, but I know that that was the year ; I fix it from recollection.

X-Q. 50. Couldn't you fix it from your recollection at about one or two years later, after thinking the matter over?

A. I fix it decidedly in 1864, and not any later.

2768 X-Q. 51. Who built this model, Rock Island Car, offered in evidence here, now before you?

A. I can't give you the man or men's names that worked upon it, but it was built in Wagner's paint shop and repair shops at West Albany.

X-Q. 52. Did you superintend its construction?

A. I did.

X-Q. 53. Where were the alterations of those three cars as to their upper berths changed to the construction of this model—at what place? 2769

A. In the shops of the Rock Island R.R., in Chicago, located on 12th st., between Clark and 4th avenue.

X-Q. 54. Where were you stationed during the years 1863 and '64, and what were your duties?

A. Depot master for the Rock Island & Michigan Southern station on Van Buren street, between Sherman and Griswold; I also had charge of the sleeping cars on the Rock Island Road.

X-Q. 55. The Chicago, Alton & St. Louis R. R., and depot was right across the river at that time, and the nearest depot in the city to the Rock Island & Michigan Southern, was it not? 2770

A. I think it was the nearest depot, but in my judgment, it was further down than Van Buren street.

X-Q. 56. The two roads in '63 and '64 were parallel and competing roads for a distance of fifty miles out of this city, and crossed each other at Joliet, were they not?

Objected to as incompetent, irrelevant and immaterial.

2771

A. Yes.

X-Q. 57. You have made several affidavits for the defendants in regard to construction and operation of the upper berths in the cars like this model, have you not?

Objection repeated.

A. Yes.

X-Q. 58. And you have busied yourself looking up 2772 witnesses for the defendants to testify to your ideas of the alteration and construction of the three old cars, have you not?

A. Not in that sense of the word as "busying my-

self." I have spoken to several about the cars. I have never asked any one to be a witness in this case.

2773

X-Q. 59. Were you subpœnaed to come here and give this testimony, or did you come voluntarily?

A. I came voluntarily, I was not subpœnaed.

NATHAN M. WHEELER.

Attest :

THOMSON H. PALMER,
Special Examiner.

2774

Adjourned to Monday, January 9th,
1882, at 9.30 o'clock, A. M.

PALMER HOUSE, CHICAGO, ILLS. }
January 9th, 1882. }

Met pursuant to adjournment.

Counsel appearing as before.

2775

JEDEDIAH I. FOGG, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows :

Q. 1. State your name, age, residence and occupation?

A. Jedediah I. Fogg; age, 66; the 15th of next month; residence, Hyde Park, Ills., and am not now engaged in business.

2776 Q. 2. Were you ever employed by the Chicago and Rock Island R.R. Co., afterwards the Chicago, Rock Island and Pacific R.R. Co., and if so, in what cities were you employed and in what capacity?

A. I was; in the city of Davenport, Iowa, and in Chicago, Ills., as master car builder.

Q. 3. When did you begin working for that company in the city of Chicago?

A. May 1st, 1864.

2777

Q. 4. About how long had you previously worked, if at all, for that company at Davenport, Iowa?

A. Somewhere about five years.

Q. 5. Did you have charge of the car building and repair shops of that R. R. Co., when you began working in Chicago on the 1st of May, 1864, and if so, how long did you continue in that capacity?

A. I had charge of the shops, and continued in that capacity from May 1st, 1864, to May 1st, 1871.

Q. 6. When you took charge of those shops on the 1st of May, 1864, in Chicago, were there any sleeping cars in use on the R. R. of the company before mentioned, and, if so, how many, and who had charge of them?

2778

A. Yes; there was three sleeping cars. Nathan M. Wheeler had charge of them.

Q. 7. State generally how they were constructed when you so took charge of those shops?

A. They were cars that had an aisle through the center, and were divided into five sections on a side, two berths in a section. The lower berths were made with two seats facing each other, and in the arms attached to the backs of those seats there was a slot of about four inches. Those were slipped out the full length. There were two boards to each seat attached together with hinges, and there was an iron bar attached to the front of one of the seats that swung around to a casting on the other seat which bridged the space between the two. Those boards were opened—unfolded—resting one end on the truss plank and the other end on the seat and this rod. There were two squab cushions hinged together and those were unfolded from each seat and a mattress put upon the top of them; that formed the lower berth. The upper berth was a box some three feet wide, six feet long and five inches deep, and at one end of that there was a head board hinged to the end of this box on the inside, and at night this head board was raised up and fastened with a hook at-

2779

2780

2781 tached to the front of this berth that hooked into an eye attached to this head board. There was a casting attached near the four corners of the berth and there was four rods, two front ones on the front of the berth next to the aisle which ran from the floor of the car to the roof, and two back ones which ran from the roof to the truss plank. The berth was moved up and down on these rods.

Q. 8. Were any alterations made in these three sleeping cars, and, if so, at whose suggestion?

A. Yes, sir; at the suggestion of Nathan M. Wheeler.

2782 Q. 9. What alterations were made, and who had charge of making them?

A. I had charge of the work under Mr. Wheeler's orders. The arrangements of the lower berths were not altered. The upper berths were taken out. The rods taken down and the castings taken off of the berths and those berths were attached to the wall by hinges at the upper edge of the berths. There was an arm made for each end of the berth with a joint in the center and a hole in each end, one end was attached to a casting. This casting was attached to the wall of the car near the roof. The other end was attached to a casting on the front corner of the berth or box on the end of the berth or box, and that held the berth when it was down. In this joint in the center of the arms there was a slot. There was a rivet or pin through this arm which played in the slot which slot was in the lower part of the arm attached to the wall of the car. These arms held the berth when down to sleep on. When the berth was thrown up there were two springs—one at each end of the berth attached to the roof of the car. The lower end of each spring was turned out a little with a hole near the end and a pin in the front corner of each end of the berth. When the berth was raised each pin struck the spring and forced it out until it came to the hole, when the spring sprung over the pin, thus holding the berth up. There was a cornice put the length of these sections to make a recess to receive the berths when up. When the berths were up they stood at an

2783

2784

angle. The berths were hinged to the side of the car just above the windows. The old head board of each berth was left as it was in the old cars. The space behind the upper berth when up was used for storing the bedding of the lower berth. 2785

Q. 10. After examining the model marked on a tag attached to it, Defendants' Exhibit "Rock Island Car," state what it represents?

A. It represents two sections of each of the three cars after they were changed.

Q. 11. When were these three cars altered in the way you have described?

A. In the summer and fall of 1864. Two were altered that summer and one in the fall of that year. 2786

Q. 12. Did these cars run after they were altered?

A. Yes, sir.

Q. 13. Where?

A. Between Chicago, Ill., and Davenport, Iowa.

Q. 14. When?

A. They ran from the summer and fall of 1864 to 1868 or 1869.

Q. 15. Who had charge of them during that time?

A. Nathan M. Wheeler.

Q. 16. You say that this model Exhibit Rock Island Car, represents two sections of each of the three cars after they were changed. Does it also represent the construction and operation of the other berths in each of these three cars as they were changed? 2787

A. Yes, sir.

CROSS-EXAMINATION BY MR. OFFIELD:

X-Q. 17. Did you know anything practically about these sleeping cars except while you came in contact with them as master car builder, that is, did you know anything about their practical use while on the road? 2788

A. Yes, sir.

X-Q. 18. What had been your occupation for four or five years prior to your taking charge of the Rock Island car shops at Chicago.

A. I had charge of the car shops at Davenport, Iowa.

2789 X-Q. 19. Have you ever been connected with any other R. R. Co. than that of the Chicago, Rock Island & Pacific?

A. Yes, sir; the Mississippi & Missouri, which is now a part of the Rock Island Road.

X-Q. 20. Where were the Rock Island car shops located at the time those three cars were altered as represented by this model?

A. On Fourth avenue, south of 12th street, in Chicago, Ills.

2790 X-Q. 21. How long a time did it take to alter one of those old rod and pulley sleeping cars so as to conform to the car represented by this model, or how long did it take to alter the two first cars, which you say were done in the summer, and how long the third car, which was done in the fall?

A. I think they were being altered from two to three weeks to a car, to the best of my recollection.

2791 X-Q. 22. And the two were altered in the summer, one immediately after the other, was it not; and the reason why they were not all altered together was because it was desired to have two sleepers running on the road each night, wasn't that so?

A. It required two to do the work.

X-Q. 23. Who assisted in the alteration of these cars beside yourself?

A. Mr. Nathan M. Wheeler, Mr. Benedict was foreman of the shops, he assisted, and also Mr. Coyne. There were some others but they are dead.

X-Q. 24. Is this model built to a scale, and if so what scale, if you know?

2792 A. I didn't build the model, but measuring it I find it is about three inches to the foot.

X-Q. 25. Do you know what became of either of those three old cars, or where they are now?

A. No, sir; I don't recollect what became of them or where they are now, my impression is they were sold.

X-Q. 26. Who built those cars originally, and when did they first run on the Rock Island Road?

A. I don't know who built them, and I don't remember when they were first put on the road.

X-Q. 27. When did you first see either of those three cars?

A. I think I first became acquainted with them in the first part of 1859.

JEDEDIAH I. FOGG.

Attest

THOMSON H. PALMER.

Special Examiner.

2794

(Recess.)

JOHN G. JONES, a witness, produced by and on behalf of the defendants, having been duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. MUNSON:

Q. 1. State your name, age, residence and occupation? 2795

A. John G. Jones, age 34, residence Chicago, Ills., and am employed on the Chicago, Rock Island and Pacific R. R. in charge of a chair-car.

Q. 2. When did you first commence running on that road?

A. In 1864—March.

Q. 3. Who employed you?

A. Mr. N. M. Wheeler was my superintendent.

Q. 4. What duty did you first perform on that road? 2796

A. I was porter on a sleeping-car.

Q. 5. What kind of a sleeping-car was it?

A. It was a Myers & Furniss patent.

Q. 6. How many such sleeping-cars were there in use upon that road at that time?

A. Three.

2797 Q. 7. Please describe how the lower berths were constructed?

2798 A. The seats drew back so as to separate their backs far enough apart to make a bed between them. There was a rod that swung around from one seat to the other at the front; unfolded a pair of hinged boards that lay on each seat and shoved them back so that two of them would fill up the space between the seat backs. These boards rested on the seats and on the plank at the back of the car and on the front on this rod, and then we took the cushions that were doubled together and spread them out right over the boards and they filled the space. We then put a mattress on top of the cushions that we got out of the top berth.

Q. 8. Please describe the upper berths?

2799 A. They were boxes about five inches deep, that run up and down on four rods, two behind and two in front. They had metal eyes that run on the rods. The berth was raised up by a rope and pulleys, and when it was pulled up the back caught on catches at each end, and the front with catches at each end in the same way. When the berth was let down to sleep on, it rested on stops on the rods. There was a mattress inside the box of the upper berth. The top berth had a head board that was hung on hinges at one end of the box and would lay down flat on the bottom inside of the box when not in use and would raise up and stand straight up towards the roof. It was held there by a hook at the front edge that turned from the inside of the front edge of the berth. At the other end of the berth there was a curtain that turned down for the lower berth which went between the seat backs to divide every two berths.

2800 Q. 9. How many sections of these berths were there?

A. There were twenty berths in a car, five sections on each side of a central aisle.

Q. 10. How long did you run this car fitted up with the Myers & Furniss patent?

A. To the latter part of June, 1864, when the car was reconstructed.

Q. 11. You mean the one that you was porter on? 2801

A. Yes, sir.

Q. 12. Were all three reconstructed about that time?

A. The other two were reconstructed shortly afterwards.

Q. 13. How long did it take to reconstruct your car?

A. I suppose ten or twelve days.

Q. 14. Were they all—the three—reconstructed so as to be alike?

A. Yes, sir.

Q. 15. How were they reconstructed? 2802

A. The rods on the back part and those on the front part and the pulleys and cords were taken out. The upper berths were hinged to the side of the car at their upper edge at the back side. When the berths were let down they were held by a rod at each end of the berth. The rods were pointed so as to bend in the middle, and were attached to the side of the car near the roof and to the berth at the front corner; the rods were slotted in the middle and when the berth turned up would fold inside of it.

Q. 16. How was the berth placed in the day time? 2803

A. It was swung up and stood at an angle in the day time and inclined toward the roof.

Q. 17. What kept its front edge from falling down?

A. A spring catch at each end that caught on a pin at each end.

Q. 18. When it was raised into this inclined position could you see the front edge of the berth?

A. No, sir; there was a piece of moulding there fastened to the roof of the car that the edge of the berth went behind.

Q. 19. How did you make up this upper berth to sleep on? 2804

A. You uncaught the catches at each end and let it down until the rods at each end supported it and then put up the head boards the same as in the Myers

& Furniss patent, and let down the curtains to divide the lower berths.

2805 Q. 20. Did these head boards and curtains operate in the same way as did the Myers & Furniss patent before the cars were altered?

A. Yes, sir.

Q. 21. Did the lower berths remain as they were before they were reconstructed, except that the rods to the upper berths were removed?

A. Yes, sir, just the same.

Q. 22. Did the three cars as reconstructed, have the construction you have just described?

2806 A. Yes, sir.

Q. 23. How long did these sleeping-cars run on the road after they were reconstructed?

A. They ran until sometime in 1869.

Q. 24. Did you run on all three of these reconstructed cars at different times?

A. Yes, sir, I did; but the first reconstructed car was my regular car.

2807 Q. 25. Please look at the model now shown to you marked Defendants' Exhibit Rock Island Car, and state whether you ever saw a sleeping car in use, the sections of berths in which were constructed and operated like those in this model?

A. I have, yes, sir; it is like the cars I run as porter on, as I have just stated.

Q. 26. Do you mean the cars that were run on the Chicago and Rock Island R. R., after they were reconstructed in 1864?

A. Yes, sir.

CROSS-EXAMINATION BY MR. OFFIELD.

2808 X-Q. 27. Everything you know about sleeping cars you know from running on the Chicago & Rock Island Road, do you not?

A. Yes, sir.

X-Q. 28. What employment did you follow before you went on that road in 1864?

A. I worked in a private family in the city of Chicago.

X-Q. 29. What did you do with the bed clothing in those old Myers & Furniss' cars before they were changed like the model here before you? 2809

A. The blankets and curtains were put up in the top berth. I am not prepared to state where we did put the pillows.

JOHN G. JONES.

Attest:

THOMSON H. PALMER.

Special Examiner.

2810

Adjourned to 10 o'clock A. M., to-morrow, Jan. 10th, 1882.

PALMER HOUSE, CHICAGO, ILLS }
January 10th, 1882. }

Met pursuant to adjournment.

2811

Counsel as before.

THOMAS K. BEMIS, a witness produced by and on behalf of the defendants, having been duly sworn testified as follows:

DIRECT EXAMINATION BY MR. MUNSON.

Q. 1. State your name, age, residence and occupation?

A. Thomas K. Bemis; age 55; residence Pekin, Ills. and occupation proprietor of the Bemis House at Pekin.

2812

Q. 2. Were you ever employed as a conductor in charge of sleeping cars upon the Chicago & Rock Island R. R.?

A. Yes, sir; I was from the latter part of the year 1861 to the latter part of the year 1866.

2813 Q. 3. When you first took charge of sleeping cars on that road, how many sleeping cars were in use upon the road?

A. There were two, and a third one came out of the shop shortly after I went on the road.

Q. 4. What was the internal construction of those cars?

A. Myers & Furniss patent.

Q. 5. Please describe the internal construction and arrangement of those cars?

2814 A. They were ordinary passenger cars with a central passageway with sections of berths on each side of the passageway along the walls of the car. There were five sections of berths along each side of the car, each section having two berths, an upper and a lower one.

Q. 6. Please describe the construction and operation of each lower berth?

2815 A. The lower berth was made from the two seats, which had ordinary reversible swinging backs. These backs were pulled out to make the berth about six feet long, their arms being slotted to allow it. There was a bar that swung from one seat frame across to the other seat frame at the front to sustain the bottom of the berth. There were boards hinged together that unfolded. There was a set of these boards for each seat, and when the two were unfolded and laid on the seat frame, the bar and the truss plank, they filled the space between the seats and formed the bottom of the berth. There were double cushions on each seat which were unfolded and formed the lower mattress. We took a mattress from the upper berth and put on top of them as the upper mattress.

2816 Q. 7. How were the upper berths constructed and arranged?

A. The upper berths were a sort of a box or tray four or five inches deep, holding a loose mattress. They were suspended by two rods parallel with the wall of the car at the back near each end of the berth, and at the front by two rods near each end of the

berth that went from the floor to the roof. There was castings attached to each side of the berth that ran on the rods, and when the berth was down it was supported on stops on the rods. The berths could be raised to the roof by rope and pulleys. There was a spring catch at the back near each end and at the front near each end that fastened the berth in its raised position. 2817

Q. 8 Was there any means provided for dividing one upper berth from another?

A. There was a head board that was hinged to the inside of the berth at one end and could be turned up to stand straight and was fastened there by a hook at the front end of the head board. This head board could be turned down under the mattress. 2818

Q. 9. Was there any means of separating one lower berth from another besides the seat backs?

A. There was a curtain attached to the end of the upper berth which dropped down between the seat backs.

Q. 10. Were all three of the cars constructed alike? I mean what you have called the Myers & Furniss patent?

A. Yes, sir.

Q. 11. Were these cars ever to your knowledge reconstructed or changed as to their interior arrangement, and, if so, when? 2819

A. They were; in 1864.

Q. 12. When was the first one so reconstructed or changed?

A. It was completed so as to come out on the road in June or July, 1864, and the others shortly afterwards.

Q. 13. Did you run these cars after they were reconstructed?

A. Yes, sir; until Nov. 1st, 1866, when I left the road. 2820

Q. 14. What was the nature of their reconstruction?

A. They took the rods and pulleys and ropes out and took the castings off the upper berths. They fastened the upper berth to the side of the car by hinges attach-

2821 ed to the upper edge of the back side of the berth, so that the berth could tip up to the roof of the car and stand at an angle. There was an arm at each end of the berth attached near the roof to the wall of the car and to the front side of the berth at the corner. This rod had a joint near its middle with a slot in which the rivet forming the joint would slide. When the berth was raised up these rods doubled up inside the berth. When the berth was up it was held up by two springs at each end of the berth, at the front suspended from the roof which caught on pins extending out from the end of the berth near the front. The hinges supported the back side of the berth.

2822 Q. 15. Was there anything to hide the front edge of the berth when it was raised?

A. There was a cornice attached to the roof of the car that run lengthwise of the car behind which the front edge of the berth went.

Q. 16. Was any change made in the construction and arrangement of the headboards for the upper berths and the depending curtains for the lower berth?

A. No, sir; those things remained the same. The lower berths remained the same.

2823 Q. 17. How long and wide were the upper berths in these cars?

A. About six feet long and as wide as the seats were. I never measured them and should say a little over three feet.

Q. 18. The three cars were reconstructed alike, I understand you?

A. Yes sir.

Q. 19. Did you run in all three of them, both before and after they were reconstructed?

A. Yes sir.

2824 Q. 20. You were then familiar with the operation of all of these cars from 1861 to 1866, as originally constructed and as reconstructed?

A. I was.

Q. 21. Were you familiar with the two cars that were running on the Rock Island Road prior to 1861?

A. Yes, sir, I was.

Q. 22. How long had they been running on that road before you went there? 2825

A. They were put on in the latter part of 1858 or early in 1859.

Q. 23. And were not changed in their construction until 1864, as you have stated?

A. No; not until 1864.

Q. 24. Was the top mattress of the lower berth carried in the recess behind the upper berth after the cars were reconstructed?

A. Yes sir; and the bed clothing and curtains too.

Q. 25. Please look at the model now shown you, marked Defendants' Exhibit Rock Island Car, and state whether you ever saw a sleeping-car constructed and operating like that model, and where? 2826

A. Yes; on the Chicago & Rock Island Road. Its berths are constructed and operate like those in the sleeping-cars I have testified were used upon the Chicago & Rock Island R. R. after the cars were reconstructed, as I have testified, in 1864. I mean the berths are the same as they were in the cars after they were reconstructed in 1864.

2827

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 26. Do you know what finally became of either one of those sleeping-cars, or where either one of them are now?

A. I do not know where they are now. They were on the road when I left.

X-Q. 27. Were you subpoenaed to come here and testify, or did you come voluntarily?

A. I was not subpoenaed, I came voluntarily.

X-Q. 28. Were those three sleeping-cars ever altered or changed in any manner after the change you have described of the dispensing with the rods and hinging the berths to the side of the car, in 1864? 2828

708

Thomas K. Bemis—Cross.

2829 A. None, to my knowledge. There never was any
change while I was on them.

T. K. BEMIS.

Attest :

THOMSON H. PALMER,
Special Examiner.

Adjourned, subject to notice.

2830

2831

2832

2833

U. S. CIRCUIT COURT,

NORTHERN DISTRICT OF ILLINOIS.

GEO. M. PULLMAN AND PULLMAN'S
PALACE CAR CO.,

versus

THE N. Y. CENTRAL SLEEPING CAR
COMPANY, ET AL.

In Equity.

2834

Further testimony taken on the part of the defendants under the 67th Rule in Equity as amended, before Thomson H. Palmer, Special Examiner, pursuant to notice.

NEW YORK CITY, N. Y. }
January 31, 1882. }

Met pursuant to notice.

2835

Present.—For Compl'ts., C. K. OFFIELD, Esq.
For Deft's., H. T. MUNSON, Esq.

Adjourned to to-morrow, February 1st,
1882, at 10 o'clock A. M.

NEW YORK, February 1st, 1882.

2836

Met pursuant to adjournment.

Counsel appearing as before.

JOHN STEPHENSON, a witness produced by and on be-

half of the defendants, having been duly sworn, testified as follows :

2837 Q. 1. State your name, age, residence and occupation?

A. John Stephenson ; age, 72 ; residence, New Rochelle, N. Y., and occupation, car manufacturer.

Q. 2. How long have you been engaged in that business?

A. Fifty years ; there was an interim from 1843 to 1855, in which I manufactured omnibuses exclusively. The rest of the period I manufactured cars and omnibuses.

2838 Q. 3. During what, if any period of this time, did you manufacture cars suited for steam R. Roads?

A. From 1832 to 1843 inclusive.

Q. 4. Did you not manufacture during the last named period, certain steam R. R. cars, which have been known as "Diamond" cars?

A. I did from about the year 1837 to 1843.

Q. 5. Did you not, at one time, make a number of Diamond cars of unusual dimensions?

A. I did ; in the year 1842 I built a train of six cars of extraordinary size for the New York & Erie R. R.

2839 Q. 6. Will you please describe the construction of said cars, giving such dimensions as you can?

A. They were very long cars, 11 feet wide, and had a central passageway from end to end. The seats were arranged back to back, each seat holding two persons, the passengers sitting face to face, each two seats facing each other. The distance between the center of the backs was approximately six feet. The cushions for the seats and also for the backs were box cushions ; that is, each seat cushion and back cushion was made of a bottom, two sides and two ends ; that made a box which was stuffed to form a cushion, and gave form and solidity and stiffness to the cushion. These cushions were all loose, capable of being shifted so as to form a plane or bed, covering the space between the backs of each pair of seats.

2840

Q. 7. When these seats and back cushions were so extended to fill the space between the backs of two facing seats, was there any support for the cushions placed over the footway between said two seats? 2841

Objected to as leading and suggestive.

A. Yes; the further end of each cushion rested on the edge of the truss plank, which formed part of the wall of the car. The inner end of the cushion over the footway rested on a rail, which found its support at each end in the seat rail.

Q. 8. Please explain which cushions were moved over the foot space to make the couch, and which cushions laid over the seat frame as a part of that couch? 2842

A. The best arrangement was to have the seat cushions proper over the foot-way, and the backs slid down and occupied the place where the seat cushions were formerly. The back cushions could be placed in the space over the foot-way to make the couch if desired.

Q. 9. I understand then that the seat and back cushions were disconnected from the seat frame, so that they could be moved bodily from their substantially right angular position as a seat and back to sit upon, to a horizontal position forming a couch to rest upon and vice versa; is that correct? 2843

A. They could.

Q. 10. When these seats and back cushions between two facing seats were placed in a horizontal plane, and supported to form a couch, as you have described, was there any division between that couch and the next adjacent couches?

A. There was; a panel filled the space between the level of the seat rail and the top rail of the back.

Q. 11. Did these panels or partitions standing vertically in the position described, form head and foot board divisions between contiguous couches? 2844

Objected to as leading and suggestive.

2845 A. They did. They divided each compartment absolutely from the compartment next to it at either end, as high up as the top rail of the seat back.

Q. 12. These couches formed of the seat and back cushions spread horizontally, with a vertical panel or partition at either end, acting as head and foot boards, made couches, as I understand you, in which a person reclining would have his vision cut off from the next adjoining couch, and would be prevented from thrusting his arms or feet longitudinally into the next adjoining couches ; is that so ?

2846

Last objection repeated.

A. That is so; I have stated that already practically.

Q. 13. Were these panels or petitions or headboards stationary or movable ?

A. Stationary, and made of wood.

Q. 14. Please briefly describe the structure which gave the car its designation of "Diamond" ?

2847 A. All the side uprights intervening between the corners were placed diagonally crossing each other at intervals, the interstices between these crossings being somewhat diamond formed, the design of construction being to secure the greatest amount of strength with the least weight.

Q. 15. Did any of these cars, so constructed as you have described, go into use upon any R. R. ?

A. Yes.

Q. 16. What R. R. ?

A. The Erie Road had some and the New York and Harlem Road had some. The New Jersey R. R. had some.

2848 Q. 17. By the Erie Road do you mean what was known as the New York & Erie R. R., and what is now known as the New York, Lake Erie and Western R.R. ?

A. Then known as the New York and Erie R. R., commencing at Piermont, N. Y., and running westward towards Lake Erie.

Q. 18. Was it your purpose when you constructed

these cars to have them capable of use both as day cars and as night or sleeping cars?

2849

Objected to as grossly leading and suggestive.

A. They were not made for sleeping cars, that is, that was not the prominent thought or purpose. I mean as to the outfit of bedding, clothing and pillows, they were not provided.

Q. 19. Was it your intention when you constructed these cars with the seat cushions to form a couch; to have the cars adapted to sit up in as day cars or to lie down in as night cars? 2850

Last objection repeated.

A. The prominent idea of the construction was a seat car. Night travel did not exist at that time upon railroads. The cushions were arranged and the car was constructed so that the cushions could form a plane on which passengers could lie.

Q. 20. Have you not in your possession an original working drawing showing the structure of the seats in said cars? 2851

A. I have an original drawing showing the elevation of the end of a pair of seats, which I now produce.

Drawing referred to marked for identification, Defendants' Exhibit Original Drawing Stephenson Car Seat. T. H. Palmer, Special Examiner.

Q. 21. Please examine the tracing copy now handed you, compare the same with Defendants' Exhibit Original Drawing, Stephenson Car Seat, and state whether the same is a correct copy thereof with the exception that pencil marks in the original are reproduced in red ink in the copy, and the water mark in the original, 2852

viz.: "J. Whatman, 1838," is indicated by dotted lines in the copy?

2853

A. It is.

Tracing copy introduced in evidence on the part of the defendants and the same is marked Defendants' Exhibit Copy Original Drawing Stephenson Car Seat. T. H. Palmer Special Examiner.

2854

Counsel for the respective parties stipulate and agree that the Defendants' Exhibit "Copy Original Drawing Stephenson Car Seat," shall be used in evidence with the same force and effect as if it were the original, with the understanding that said original shall be produced at the trial if demanded by the counsel for the complainants.

Q. 22. When was this Defts' Exhibit "Original Drawing Stephenson Car Seat" made?

2855 A. In 1841 or '42; 1842, probably, before the cars were constructed.

Q. 23. Do you find the water mark "J. Whatman, 1838," in the paper upon which this drawing is delineated?

A. Yes.

Q. 24. Please look at the model now shown to you and state what it represents?

A. It represents a section of the Diamond Cars constructed as described by me in this deposition.

2856

Model referred to filed in evidence on behalf of the Defendants and the same is marked Defendants' Exhibit Stephenson Car. Thomson H. Palmer, Special Examiner.

Further examination of this witness adjourned to Saturday morning, Feb. 4th, 1882, at 9 o'clock A. M. 2857

Regular examination adjourned to tomorrow, Feb. 2, 1882, at 10 o'clock A. M.

NEW YORK, Feb. 4, 1882.

Met pursuant to adjournment,

Counsel appearing as before. 2858

JOHN STEPHENSON'S examination continued by Mr. Munson.

Q. 25. Please explain the general arrangement of these seats with respect to the car body?

A. The car had a central aisle running from end to end, and on each side between the aisle and the wall sides of the car the seats were arranged.

Q. 26. How many such seats did the car contain?

A. I don't remember; my impression is that each car had 48 sitting places; two persons to a seat or bench; that is twelve benches on a side. 2859

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 27. Have you ever given any affidavit or deposition in which you described the construction of the two diamond cars which you built for the Erie R. R., and which you now say are represented by the model before your present deposition?

A. I have made a deposition describing some general features of the construction; not entering into details. 2860

X-Q. 28. When and where and in what case was that deposition given?

A. I don't remember the time; I think the deposition was made in the office of my manufactory, 47 East

2861 27th street, New York City. I don't know anything about what case it was. I should think it was about ten years ago.

X-Q. 29. Do you not know the names of either of the litigants in that case?

A. I think the Pullman Car Co. was one of the parties.

X-Q. 30. Did you ever give any other deposition except that one, relating to those cars?

A. I recollect but that one.

2862 X-Q. 31. Is your recollection any more distinct concerning the construction of those diamond cars like the model, to-day, than it was on the date of the giving of that deposition?

A. I don't know without a test. I have no reason to suppose that my memory has changed much, if any, regarding the construction since that affidavit was given.

X-Q. 32. Were these cars like the model, 11 feet wide, inside or outside measure?

A. I couldn't answer that question. My impression is that they were generally considered 11-feet cars, outside measure. The model doesn't give any width.

2863 X-Q. 33. Who made this model?

A. It was made by Thomas Brown, in my shop. I had no interest in it. Thomas Brown consulted with me during the process of making it.

X-Q. 34. Who actually constructed those cars, like the model, on the Erie Road?

A. The operatives are dead, or lost, to my knowledge; none of them in my establishment at the present time.

2864 X-Q. 35. Have you any books or memoranda or description of any kind, showing how those cars like the model were constructed for the Erie Road, except this car-seat drawing introduced in evidence?

A. There are no other books or memoranda, except a lithograph which I now produce, which shows a railroad car on a track which has a latticed side.

It is stipulated by and between coun-

sel for the respective parties that a photograph of the lithograph referred to shall be filed in evidence on the part of complainants, and marked Complainants' Exhibit, Stephenson, Lithograph, T. H. Palmer, Special Ex'r, the same to have the same force and effect as if the original lithograph were introduced in evidence. 2865

X-Q. 36. This diamond car, shown in this lithograph sketch in the foreground is a correct external representation, is it not, of the diamond cars constructed for the New York & Erie Railroad, like the model? 2866

A. I don't know that it is. The number of the diamonds and the size of the diamonds may have differed.

X-Q. 37. But you don't know whether or not they are different from those on the Erie cars?

A. I do not; the sashes may have been differently placed.

X-Q. 38. So far as you have any recollection, however, this diamond car shown in the foreground of this lithograph, is a correct external representation of the cars constructed for the Erie Railroad, like the model?

A. The details of this lithograph are not worked out. In its general features it represents the cars made for the Erie Road. 2867

X-Q. 39. How long were these diamond cars, like the model, constructed for the Erie Road in 1842?

A. I don't remember.

X-Q. 40. How high were they, at the center and outside edges?

A. I haven't the measurements. They were amply high for persons to walk erect through the center, but were not as high as cars of the present day.

X-Q. 41. How wide was the longitudinal aisle of these cars between the seats? 2868

A. I can't give the exact measurement. They were approximately two feet wide.

(Note—No X. Q. 42.)

X-Q. 43. Your recollection as to the details of con-

struction of these diamond cars for the Erie Road, like the model, is not very distinct, is it?

2869

Objected to, as incompetent, irrelevant, immaterial, and for the reason that the evidence given by this witness is the best and only proper test of his recollection.

A. Not all details. The more prominent features of construction, I think, I remember.

X-Q. 44. Has your mind been occupied at all with the construction of railroad or steam cars for a number of years, or have you had occasion to keep your recollection refreshed or in a correct condition as to the manner in which passenger railroad cars were built by you during the first ten or fifteen years after 1832, especially as to details?

2870

A. I have, not as a constructor of such cars, but in legal questions growing out of the early construction of cars.

X-Q. 45. The cushions of all passenger cars constructed for R. Roads between the years 1840 and 1850 were loose cushions, were they not?

A. The seat cushions were usually loose and flexible, the backs were always fast; that is, I have no recollection of any that were not fast, except in these diamond cars, made for the N. Y. & Erie Road.

2871

X-Q. 46. Since the year 1875 you have given several verbal statements to different parties here at your office, who have called upon you to ascertain your recollection of the construction of those cars for the N. Y. & Erie Road, like the model, have you not?

A. I have at different times responded to inquiries on that subject; not confined to the interval mentioned.

X-Q. 47. You have stated to those parties in reply to their questions concerning the construction of those cars for the Erie Road like the model, repeatedly, that the only object in thus constructing them was to have them wide, broad and roomy, and that no idea of their being used for any kind of sleeping purposes ever en-

2872

tered into the construction of those cars. Have you not repeatedly made substantially such statements?

2873

Objected to as incompetent, irrelevant and immaterial, the name of the person to whom and the time when the alleged statement was made not being given.

A. No ; I never intended to make such a statement.

X-Q. 48. Prior to the date of the beginning of this suit a little over a year ago, to whom did you ever state that there was a bar underneath the seats of those cars, by which a passenger could blockade the entrance of those seats and monopolize the six seats by lying down on the cushions?

2874

A. What do you mean by six seats?

X-Q. 49. I mean that one or two parties called by the defendants to testify to the construction of those cars, the same as you have been called, have stated under oath that each of those opposite facing benches or seats were to be occupied by three passengers, and were so occupied in the actual running of the cars, and I have assumed that their oaths were correct in asking the question?

2875

A. I have not regarded those seats or benches as long enough to seat three persons comfortably. In answering X-Q. 48, I say : The purpose or idea of that arrangement is as old with me as the construction of those cars for the Erie Road, and has been referred to an indefinite number of times. I cannot now name any persons to whom I have mentioned that fact among the inquirers referred to. I have not the names of the inquirers.

X-Q. 50. And you have no distinct recollection, as I understand you, that those opposite facing seats were constructed for two or three persons each?

2876

A. I do understand that three persons could be crowded into each seat, which is now sometimes done on cars of ten feet width, but I think such occupancy was and is exceptional.

2877 X-Q. 51. You do not recollect then that these seats were long enough for three persons to occupy them easily and comfortably, and were so constructed for that purpose and were so used in actual operation?

A. I do recollect that the seats were long enough to contain three persons, but they were not comfortable, and people would not sit so if they could avoid it.

X-Q. 52. But they were constructed with the intention of holding three persons to a seat, were they not?

A. They were constructed with the possibility of holding three persons to a seat.

2878 X-Q. 53. Were the seats on both sides of the aisles of those diamond cars like the model, exactly of the same length, or were the aisles of those cars exactly in the middle?

A. I remember the aisles being central in the cars, but the width of the aisles, I don't remember, as I have already stated, in not fixing definitely the length of the seats.

X-Q. 54. Have you any positive recollection as to whether the seats on opposite sides of the aisles were of the same length?

2879 A. I believe so, and have no other impression.

X-Q. 55. Have you any way of furnishing the exact date in the year 1842, when these cars like the model were placed on the Erie Road?

A. I have not.

X-Q. 56. This exhibit drawing which you have furnished, and which has been offered in evidence, if of the same size and proportion and arrangement as the seats of those cars, that is, the seats were constructed exactly from the drawings as far as the drawings show the construction?

2880 A. The drawing is only an elevation of the end of the seats. It is full size, and I believe the seat ends were constructed in exact accordance with that. I refer to the woodwork.

X-Q. 57. You don't recollect as a matter of fact that the truss plank of those cars, like the model, was two

and a half or three inches lower than the seat frames which rested upon it, do you?

A. I do not.

2881

X-Q. 58. Have you any positive recollection as to whether that was the fact?

A. No.

X-Q. 59. Have you ever built or assisted in the construction of any sleeping cars for any R. R. in this country?

A. No; not in cars run as sleepers.

X-Q. 60. Did you ever work on any kind of a passenger car for any R. R. which came any nearer being a sleeping car than these diamond cars you built for the Erie R. R. in 1842?

2882

A. I think not, except the cars with longitudinal seats; a person could lie down on them.

X-Q. 61. You mean by longitudinal seats the cars built in early times with benches along the side of the wall of the car, do you not?

A. Yes; the seats running lengthwise of the car and against the side of the car forming the back of the seat.

X-Q. 62. What was the size of the windows, in those diamond cars like the model?

2883

A. I don't remember.

X-Q. 63. Do you know what became of any of those diamond cars, like the model, constructed for the Erie Road, or where any one of them is now?

A. I don't know of the existence of any of them at the present time.

X-Q. 64. It is a much more convenient and satisfactory way to construct the seat and back cushions of R. R. passenger cars as shown in the model, for the reason that they can be upholstered more easily when the seats are worn or damaged, is it not, or the springs can be removed or others substituted?

2884

Objected to as incompetent, irrelevant
and immaterial, as calling for opinion

merely, for which no proper ground has been laid.

2885

A. I conclude that structure is not satisfactory, because it is unpopular. In regard to the mechanical construction, the method of the Erie cars is more troublesome and expensive.

X-Q. 65. You are not aware, are you, that by far the larger proportion of passenger cars to-day have their constructed as shown in your model?

Objected to as incompetent, irrelevant and immaterial.

2886

A. I am not so aware, nor have I found it in my experience. I travel every day on steam roads and have for many years.

(Note—No X-Q. 66.)

X-Q. 67. Are you aware of the fact that the Erie R. R. at the date you constructed these cars for it, extended only from Piermont, N. Y., to Middletown, N. Y.?

A. I was always under the impression that they didn't reach beyond that, if so far.

2887 X-Q. 68. How long has it been since you had anything to do with the construction of passenger cars for railroads?

A. We have made cars propelled by steam at various times up to the present time, but have not made what is known as steam road cars in the last forty years, about.

X-Q. 69. Did you make any other passenger cars for the Erie Road besides the ones you have described like the model?

A. No.

2888 X-Q. 70. Who are your counsel or solicitors relating to patents or patent litigation?

Objected to as incompetent, irrelevant and immaterial.

A. The house of George Gifford, in N. Y.

X-Q. 71. Were you subpoenaed to give this testimony, or did you give it voluntarily at the suggestion of any person? 2889

Same objection.

A. I didn't volunteer it. I was not subpoenaed, I was requested to give my testimony by counsel.

RE-DIRECT EXAMINATION BY MR. MUNSON.

R-D-Q. 72 Would you not give your testimony concerning any matters of fact within your knowledge upon the simple request of respectable counsel and not require that a subpoena be issued to compel you to do so? 2890

A. I have not been accustomed to require subpoenas though often called upon to give testimony.

R-D-Q. 73. Thomas Brown, who built the model, is a workman in your employ, who builds all of your models, is he not?

A. He is now in my employ, but he does not make all of my models. He makes some of them and is a model maker. 2891

R-D-Q. 74 You say there were twelve benches on a side in the cars referred to. How many sections composed each by two facing benches or seats did that make on each side of said cars?

A. I didn't intend to name twelve as a positive number, and think it quite probable there were more. That would make six or more such sections.

R-D-Q. 75. Why were the seat and back cushions of those cars constructed of great strength in box form as you have stated?

A. So that they would be strong enough with end supports only, to bear the pressure of persons reclining on them without breaking down. 2892

R-D-Q. 76. Am I right in understanding that the prominent thought and purpose in the construction of these seats in these cars was to have them capable of

being sat upon as seats and also extended as a platform to lie down upon ?
2893

Objected to as leading.

A. I have stated that in effect in a previous answer. That is, they were made capable of a double purpose of seat and couch.

R-D-Q. 77. And that the top surface of the cushions when spread out as a platform or couch was level or substantially so ?

2894

Same objection.

A. I so understand the construction.

R-D-Q. 78. This deposition referred to was it not prepared and brought to you to read and swear to, and did you not, upon finding it to contain correct statements, sign and swear to it ?

Same objection.

A. That is my recollection of it. It was brought to
2895 the office and some notary or other person competent to administer oaths came also, and it contained a correct statement of the facts as far as it went, and I signed and swore to it.

R-D-Q. 79. Concerning the lithograph in evidence. Do you know whether or not the artist who made the drawing or lithograph had before him one of the diamond cars when he made either, or whether he sketched the car in according to his own fancy ?

A. I do not know.

2896

In reference to Q. 7 witness explains that his answer applies to the design and plan of construction and not to his knowledge of the execution.

R-D-Q. 80. Is it not your best recollection that the plan or design in this particular was carried out?

2897

Objected to as leading.

A. I. so understand it. I suppose it was, but the confusion of the shop at the time those cars were turned out, the shop being in the hands of the sheriff, leads me to infer the possibility that some of the details were not carried out.

R-D-Q. 81. But your best recollection I understand to be that the two cars sent to the Erie R. R. were completed according to the plan and design.

2898

A. Yes. I have no knowledge to the contrary.

JOHN STEPHENSON.

Attest:

THOMSON H. PALMER,
Special Examiner.

NEW YORK, N. Y., February 2, 1882.

2899

Met pursuant to adjournment.

Counsel appearing as before.

ABNER GRIFFIS, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows:

Q. 1. State your name, age, residence and profession?

A. Abner Griffis, age 65, residence Montrose, Susquehanna Co., Pa., and profession civil engineer.

2900

Q. 2. What is your present occupation?

A. Farming.

Q. 3. Where is your farm located and how large is it?

A. My home farm contains 700 acres, and I have another of 200 acres, both in Susquehanna County, Pa.

Q. 4. Where were you employed during the years 1846 to 1854?

2901 A. On the New York and Erie R. R.

Q. 5. What is the present name of that R. R.?

A. The New York, Lake Erie and Western R. R.

Q. 6. What were your duties during that period of time?

A. For the first two or three years I had various duties I had a large force at work in the woods getting timber and wood out. I occasionally run trains. During the remaining part of the period I was purchasing agent for the road. I had the entire charge of the fuel department.

2902 Q. 7. During that period of time did you or not have occasion to frequently travel upon the trains passing over that R. R., and, if yea, please state how often?

A. I did; very often.

Q. 8. When you went upon the road in 1846 was there any cars in use upon it known by the designation of "Diamond" Cars?

A. There was; two.

Q. 9. Please state, if you know, what gave them this name?

2903 A. It was from their windows being put in in diamond form.

Q. 10. Please describe the interior of these cars?

2904 A. The frames of the seats were stationary. Two seats were placed back to back causing each two seats to face each other. The cushions of the seats were loose from the frames of the seats and a rod or bar was moved across the opening between two facing seats at the front or aisle side reaching from one seat to the other. The cushions of the seat were laid upon this bar at the aisle side of the car and upon the truss plank at the wall side of the car. The seat cushions were slid forward over the foot space and were supported as I have described, and the back cushions were slid down to take the place of the seat cushions, thus making a platform or bed.

Q. 11. Where did this rod or bar come from?

A. It slid from under the seat.

Q. 12. When these seat cushions and back cushions were moved down to make a platform or bed did they lie horizontal ? 2905

Objected to as leading.

A. They did.

Q. 13. Did you ever lie down upon them for the purpose of resting, while the car was running over the road ?

A. I did ; many times.

Q. 14. Did you see passengers use them in that way while the car was running over the road ?

2906

A. I did.

Q. 15. While lying upon these beds could you look directly forward or rearward and see into the next bed, or thrust your arms or feet directly into the next beds ?

A. No, sir ; there was a partition against which these back cushions rested (when they were up that is all they had to support them) that formed head and foot boards between the beds.

Q. 16. When these back cushions were set up vertically against these partitions to form seat backs, did they not stand up on the same ledge or rail that supported them when they lay down flat ? 2907

Objected to as leading, and for the further reason that the witness has already sworn that the partitions supported the back cushions.

A. They did.

Q. 17. When these seat and back cushions were laid flat as a bed to rest upon, did the platform they made fill out the space between these head and foot boards ? 2908

A. They did.

Q. 18. I understand that these same cushions, when slid back to place, formed two facing seats to sit upon, is that so ?

A. Yes, sir.

2909 Q. 19. Was there any central aisle in these cars?

A. There was; it ran longitudinally through the center of the car.

Q. 20. Were these combined seats and couches on both sides, or only on one side of that aisle?

A. On both sides alike.

Q. 21. How many beds or couches could be made on each side?

A. I should think about half a dozen on a side.

Q. 22. How long were these couches when prepared to rest on?

2910 A. I never measured that distance. They were long enough for a person to lie down in—lay straight—about six feet.

Q. 23. Did you find in lying upon them that they were long enough to afford you perfect comfort?

A. Yes, sir.

Q. 24. What is your height?

A. I recollect some years ago I measured five feet ten and a half inches.

Q. 25. Were these cars any larger than ordinary cars at that time?

2911 A. They were wider. I couldn't say clearly whether they were longer.

Q. 26. The ordinary cars upon the N. Y. & Erie R. at that time were wider than ordinary cars on account of the broad gauge of that road, being at least ten feet, were they not?

A. I think they were at least that. The road gauge was six feet. In those days it was calculated to seat three parties in a seat.

Q. 27. Were these cars in use upon the road in 1846 when you went there?

2912 A. They were.

Q. 28. And were they in use a number of years to your knowledge?

A. They were.

Q. 29. Please look at the model now shown to you marked Defendants' Exhibit Stephenson Car, and state

whether or not you ever saw a car constructed and operating like it?

A. That is like the cars I have testified about as having been used upon the New York and Erie R. R. It shows only three beds of one side of the car. Their construction is like it was in the cars, but as I have said, I think there were six beds on a side in the cars. 2913

Q. 30. I call your attention to the board partitions, which you have called head and foot boards constituting a solid permanent back for each seat against which the back cushions rest, which partitions came up as high as the seat back, and extend as low as the bed, was that so in the cars?

A. It was.

2914

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 31. How many diamond cars were there like the model just referred to, running on the N. Y. & Erie R. R., at the time you went there in 1846?

A. There were two.

X-Q. 32. Were there any other cars like this model operated upon that road besides these two after 1846?

A. No, sir; not that I ever saw.

X-Q. 33. For how long a time did these two diamond cars like the model run on the N.Y. & Erie Road after 1846?

2915

A. I couldn't say exactly; I think they were there when I left. They were there, but whether they were in active use when I left I can't say.

X-Q. 34. Between what points did these two diamond cars like the model run upon the N. Y. & Erie Road during and after the year 1846?

A. Between Piermont and Port Jervis.

X-Q. 35. What was the distance apart between those two points by that road at that date?

2916

A. It was 46 miles from Piermont to Goshen, seven miles to Middletown, nine miles from Middletown to Otisville, twelve miles to Port Jervis, making 74 miles, that is my recollection.

X-Q. 36. Did the road run from Piermont to Port Jervis at the time you went in its employ in 1846?

2917 A. No, sir.

X-Q. 37. Between what points was it completed in 1846?

A. Piermont and Middletown.

X-Q. 38. Do you know what was the greatest length of the N. Y. and Erie Road at the time when these two diamond cars like the model were constructed for it?

A. I couldn't say that. I don't know what time they came on the road.

X-Q. 39. You swear positively, do you, that in those two diamond cars there was a complete board partition or separation between the contiguous seats, as shown in that model?

A. I do ; that is my recollection.

X-Q. 40. And you have nothing but your recollection upon which to base your testimony as here given, have you?

A. I have not ; but I was so familiar with the cars that I recollect them clearly.

X-Q. 41. The first answer which you gave and which the notary did not get down to the last question was this, "nothing except as I see that," pointing to the model, is that not so?

2919

Objected to as incompetent, irrelevant, and immaterial, the witness having answered the last question upon its being propounded to him as recorded by the examiner.

A. My recollection is what I rely upon and the model corresponds with my recollection. My recollection is not aided by the model.

2920

(The model is removed from the sight of the witness.)

X-Q. 42. Do you pretend to state to the Court that

in those two old broad gauge passenger cars which were to hold six persons in the two opposite facing seats, that the R. R. Co., furnished a bar by which a single passenger could stop up the footway and arrange the cushions inside of that bar and sprawl out over six seats in a day passenger coach to the exclusion of the other five passengers? 2921

A. The passengers used to do it. The cars were not usually crowded with passengers. I know the bar was so used.

X-Q. 43. That bar was so connected with the seats that it couldn't be removed, was it?

A. I never saw it removed. I don't know how difficult it would have been to have taken it out. 2922

X-Q. 44. There is no probability of your being mistaken about this bar, and getting a bar that you have seen sometimes in a bed lounge mixed up and located in those two cars, is there?

A. No, sir; there is no probability of that.

X-Q. 45. You volunteered or inserted the word "bed" in answer to question 10 in your direct interrogatories. You used the word "bed" there in the same significance that you would use it in any common railway passenger car, for instance, one with reversible seat backs where the seat cushions could be arranged on the seat frames so a passenger could lie down on it, did you not? 2923

A. No, sir. It was a place to lie down to sleep and I don't know that such an arrangement can be made of the seat cushions in an ordinary car.

X-Q. 46. You don't know in an ordinary railway car, do you, that the seat cushions can be arranged so that a passenger can lie down and sleep on them?

A. No, sir. I do not. I have slept a great deal in R. R. cars, but I don't know of any way to arrange the seat cushions in an ordinary car to improve them over their position as seats for sleeping. 2924

X-Q. 46 a. Were you subpoenaed to come here and give this testimony, or did you come voluntarily?

2925 A. I came voluntarily at Mr. Munson's (counsel's) request. I was not subpoenaed.

X-Q. 46 b. Do you know what finally became of those two diamond cars like the model or where they are now?

A. I do not.

X-Q. 47. Did you see this model Defts' Exhibit Stephenson Car and examine it before you went on the stand to give your testimony?

A. I did see it this morning, in this office for the first time, before I gave my testimony.

2926 X-Q. 48. Have you ever given any affidavit or testimony in any case or at any time before to-day concerning the construction and operation of those two old passenger cars?

A. I have.

X-Q. 49. When and where?

A. At my place. I can't tell how long ago it was, a few months ago.

X-Q. 50. Was it an affidavit or a deposition?

A. It was an affidavit.

X-Q. 51. Was any model professing to represent that car shown you then?

2927 A. No, sir. I was simply inquired of as to my recollection of the cars, and swore to that statement.

RE-DIRECT EXAMINATION BY MR. MUNSON.

R-D-Q. 52. Had you not both orally and by affidavit fully described the construction and operation of the diamond cars like the model, run and used upon the N. Y. & Erie R. R. in 1846 and afterwards for some years, before you saw any model?

A. I had.

2928 R-D-Q. 53. To what Western point was the N. Y. and Erie R. R. next completed after you entered its employ in 1846?

A. To Otisville, late in 1846.

R-D-Q. 54. When next and to what point westward?

A To Port Jervis, completed on the night of December 31st, 1848.

R-D-Q. 55. And did these diamond cars, you have testified about, run from that time afterwards from Piermont to Port Jervis? 2929

A. They were run between both points.

R-D-Q. 56. I understand you to say that the seat and back cushions in these cars when arranged horizontally to lie down upon formed what you have called a platform or bed, is that so?

A. Yes, sir; it is.

RE-CROSS EXAMINATION.

2930

R-X-Q. 57. These cars like the model were considered, so far as you know, in no other manner, and were not known other than as unusual sized broad gauge passenger coaches, were they?

Objected to as not proper re-cross examination.

A. They were known as such, and they were known as cars susceptible of being changed as in the model.

2931

A. GRIFFIS.

Attest:

THOMSON H. PALMER,
Special Examiner.

Adjourned to 10 o'clock, A.M., to-morrow, February 3, 1882.

NEW YORK, N. Y., Feb. 3d, 1882.

2932

Met pursuant to adjournment.

Counsel appearing as before.

ARCHIPPUS PARISH, a witness produced by and on

behalf of the Defendants, having been duly sworn, testified as follows :

2933

Q. 1. State your name, age, residence, and occupation ?

A. Archippus Parish ; age, 66 , residence, Montrose Station, Penn. I am a coach and car builder by trade. At the present time I am not engaged in business.

Q. 2. Were you ever employed by the New York & Erie R. R., now known as the N.Y., Lake Erie & Western R. R. ?

A. Yes, sir.

2934

Q. 3. When did you enter its employ ?

A. In 1840, the 10th day of May.

Q. 4. In what capacity ?

A. As car-builder foreman of the car department at Piermont, N. Y.

Q. 5. While so employed by that road, did you know of its having what were known as diamond cars ?

A. Yes, sir ; they came there, I think, in 1843, from Stephenson's manufactory, at Harlem, N. Y. They were brought on a ferry boat. I had them taken off the boat and the trucks put under them to fit them for

2935

Q. 6. How many of them were there ?

A. Two.

Q. 7. Did they go into use on that road as passenger cars ?

A. Yes, sir.

Q. 8. Please state, if you know, why they were called diamond cars ?

A. Because they were built trussle shape, that is, their sides, and the windows stood in diamond form.

Q. 9. How were the seats arranged inside of the cars ?

2936

A. They were stationary seats, the passengers sitting back to back and face to face, each two seats facing each other.

Q. 10. Were the cushions fast or loose ?

A. Loose.

Q. 11. Could the cushions be arranged to make a bed, and if so, how ?

2937

Objected to as leading.

A. Yes, sir, they could. By first drawing a bar from under one stationary seat and extending it to the other over the foot-way, next the aisle, in the middle of the car. The two seat cushions were placed in the middle and the back cushions were pulled down—where the seat cushions formerly were.

Q. 12. When the bed was made by placing the seat cushions over the foot-way, and the back cushions were laid down where the seat cushions were moved from, could a person lying on the bed look either way into the next adjoining bed ?

2938

A. No, sir.

Q. 13. Why not ?

A. Because of the solid woodwork in the backs of the seats.

Q. 14. Did that solid woodwork or back of the seats always remain stationary ?

A. Yes, sir ; it was a wood partition made fast.

Q. 15. Did it extend upward from the seat bottom to the top rail of the seat ?

2939

A. Yes, sir.

Q. 16. How many such beds could be made along each side of the car ?

A. I think six.

Q. 17. Were these seats that faced each other, and which could be made into beds, arranged along each side of the car, with a central aisle between them ?

Objected to as leading.

2940

A. Yes.

Q. 18. When the seat cushions were brought to the center over the foot-way, in making the bed with their inner ends next the aisle resting on the bar, what supported their outer ends next to the wall of the car ?

A. On the truss plank.

2941 Q. 19. Did you ever run a train as its conductor, having one of these cars attached to it on the said R.R.?

A. Yes.

Q. 20. For how long a time?

A. From a year and a half to two years. In 1846 and 1847.

Q. 21. How far did your train run then?

A. From Piermont, N. Y., to Otisville.

Q. 22. What was your train called?

A. The day and night express.

2942 Q. 23. Please look at the model now shown you, marked Defendants' Exhibit Stephenson Car, and say whether you ever saw cars constructed and operating like it, and where?

A. Yes; I saw them on the New York & Erie R.R.

Q. 24. Do you mean that the cars you have been testifying about, as used on the N. Y. & Erie R. R., on the train conducted by you, were constructed and operated like this model?

A. Yes, fac similes of it, as near as can be.

2943 Q. 25. Did you ever convert two seats in either of those cars into a bed, while the train was running over the road?

A. Oh, yes; many a time.

Q. 26. Did you ever lie down to rest on the bed so made while the train was running on the road?

A. Yes, sir; a short distance at a time.

Q. 27. Did you see passengers resting upon the beds so made while the train was running over the road?

A. Yes; often.

Q. 28. Was there any bed clothing as pillows or blankets used?

2944 A. No.

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 29. How long did you remain in the employment of, or connected with the N. Y. & Erie R. R., after the year 1840?

A. Till 1856 ; after 1847 I had charge of their express and like business in N. Y. City.

X-Q. 30. What was the schedule time of the running of a passenger train with the car attached like this model between Piermont and Otisville in the years 1846 and '47? 2945

A. I think it was about twenty-five miles an hour. They started from Otisville at, I think, five o'clock in the afternoon, and got to Piermont at 9:15 in the evening.

X-Q. 31. Was that a passenger train or a freight?

A. This was not the passenger train. It was called the thunder and lightning milk train and had the right of way and always had a passenger car attached, and frequently this car inquired about. This car, once in a while ran on the regular passenger train. 2946

X-Q. 32. This car, like the model, was considered an old and disused car at the time you were conductor of the milk train and not fit to run on the passenger trains, wasn't it?

A. No ; it was not.

X-Q. 33. You never was conductor then on a regular passenger train on the Erie Road?

A. Yes, I have been.

X-Q. 34. What was the schedule time of a passenger train—I didn't refer to a scrub milk train in my previous question—between Piermont and Otisville in the years 1846 and '47? 2947

A. About the same time. I think it was about twenty-five miles an hour.

X-Q. 35. Each of those opposite facing seats in the car like the model were made to hold three persons, were they not?

A. Yes.

X-Q. 36. Four persons could sit quite comfortably in each of those seats? 2948

A. No.

X-Q. 37. Four ordinary persons could sit in those seats?

A. No.

X-Q. 38. Do you know how many persons that diamond car like the model could accommodate?

2949 A. I think it was sixty-four.

X-Q. 39. Ladies and gentlemen both rode in that car, did they?

A. Yes.

X-Q. 40. That bar that you have been talking about being stretched at the inner aisle side between the seats was a stick of wood that the passengers would get out of the wood-box and lay across there to support the aisle side of the cushions, wasn't it?

A. No.

2950 X-Q. 41. Did they burn wood in the stoves in that car?

A. No; not that I know of.

X-Q. 42. Was there any sleeping cars run on that road while you were connected with it?

A. Not by that name.

X-Q. 43. Were you subpoenaed to come here and give this testimony or did you come voluntarily of your own account?

A. I was not subpoenaed. I came voluntarily at Mr. Munson's (counsel's) solicitation.

2951 X-Q. 44. Had you seen this model before you came on the stand to testify?

A. Yes.

ARCHIPPUS PARISH.

Attest:

THOMSON H. PALMER,
Special Examiner.

Regular examination adjourned to Monday, Feb. 6, 1882, at 11 o'clock A. M.

NEW YORK CITY, }
February 6, 1882. }

2953

Met pursuant to adjournment.

Counsel appearing as before.

Adjourned to Tuesday, Feb. 7, 1882, at
10 o'clock A. M.

NEW YORK, Feb. 7, 1882.

2954

Met pursuant to adjournment.

Counsel appearing as before.

EDMUND SMALLEY, a witness produced on behalf of the defendants, having been duly sworn, testified as follows :

Q. 1. State your name, age, residence and occupation?

A. Edmund Smalley, age 51 years, residence Piermont, New York, occupation car builder. 2955

Q. 2. Were you ever employed by the R. R. Co. now known as the N. Y., Lake Erie and Western R. R. Co.?

A. I was, and am.

Q. 3. When did you first enter its employ?

A. About 1847.

Q. 4. Where?

A. At Piermont shops.

Q. 5. When you first entered its employ had that R. R. Co. in use upon its road passenger cars known as "diamond cars"?

2956

A. It had.

Q. 6. Did you see and examine them shortly after you entered the employ of that R. R.?

A. I did.

Q. 7. How long did they continue in use on the road?

A. Well I suppose they continued in use in the neighborhood of eight or ten years.

2957 Q. 8. What gave them the name of diamond cars, if you heard?

A. It was the peculiar construction of the sides, the windows being diamond shape.

Q. 9. How many of these cars were there?

A. Two or three.

Q. 10. Please describe how the seats were arranged in these cars.

2958 A. The seats were placed on each side of the central aisle of the car and running crosswise of the car; they were back to back. The seat cushions and back cushions were arranged so as to be removed at will, or shift in other position from that which they had when used as seats.

Q. 11. Please explain what other position the seat and back cushions could have beside the one they were in when used as seats?

2959 A. They could be moved so as to make a bed in case of need by drawing out the seat cushion and sliding down the back cushion. The seat cushion rested on a strip of wood or rod which came out from under the seat. The back cushion rested in the place of the seat cushion when the seat cushion was removed.

Q. 12. Did each two seats face each other?

A. They did.

Q. 13. How many seat cushions and how many back cushions did it take to make each bed?

A. Two seat cushions and two back cushions.

Q. 14. Then I understand that the seat and back cushions of two facing seats were moved into position to make a bed?

A. That is so.

2960 Q. 15. And that each seat cushion rested on a strip of wood or rod when supported as a bed?

A. It did.

Q. 16. Where was this strip of wood or rod with respect to the aisle of the car?

A. It was under the seat or on the seat frame.

Q. 17. Was it next to the aisle or next to the wall of the car; that is, did it support the ends of the seat cushions that were toward the aisle or towards the wall of the car? 2961

A. Towards the aisle.

Q. 18. What supported the other ends of the seat cushions when drawn forward to make the bed?

A. The rocker, truss plank or strip of wood screwed on for the purpose.

Q. 19. When the seat cushions were drawn forward and supported at the wall of the car as stated, and at the aisle ends by the strip of wood or bar, did they then lie over the footway between the seats proper when used to sit up in? 2962

A. They did.

Q. 20. Could a person reclining on a bed made by these cushions look forward or rearward into the next section or bed?

Objected to as leading.

A. They could not.

Q. 21. What prevented them from looking right forward or rearward into the next bed? 2963

A. The partitions between the two seats, which stood high enough to prevent it.

Q. 22. What kind of a partition was it?

A. Solid wood with a cap on top.

Q. 23. Stationary or movable?

A. Stationary.

Q. 24. What kind of cushions were there in those cars—I mean were they made on rectangular frames or how?

A. They were made on a square box stuffed with hair, had tight board bottoms. 2964

Q. 25. When the cushions were laid out as a bed was that bed a flat horizontal bed?

A. It was.

Q. 26. How many such beds could be made on each side of that car?

A. Six or seven.

2965 Q. 27. These were cross-seats, I understand you, and that would make the beds lengthwise of the car, each one extending from the wooden partition in the back of one seat to the wooden partition in the back of the next seat; would it not?

A. It would.

Q. 28. The seat and back cushions still being cross-wise of the car?

A. Yes, sir.

Q. 29. How long were the beds?

A. I should judge about six feet more or less.

2966 Q. 30. Please look at the model now shown to you marked Defendants' Exhibit Stephenson Car, and state whether or not you ever saw a car constructed like that and where?

A. I have examined the model and I have seen cars like it. I mean the ones I have been testifying about used on the Erie R. R., except that the cars had several sections more than this model shows and were of larger size.

CROSS-EXAMINATION BY MR. OFFIELD.

2967

X-Q. 31. For whom are you building cars at the present time?

A. For the N. Y., Lake Erie & Western R. R.

X-Q. 32. In what capacity were you employed by the New York & Erie Road in 1847 and for eight or ten years thereafter?

A. In constructing cars for the road, and two years on the road.

X-Q. 33. What were you doing two years on the road?

2968 A. I was braking part of the time, part of the time firing, and part of the time engineer.

X-Q. 34. During that time whatever work you done as a car builder was as a day laborer, was it not?

A. It was.

X-Q. 35. How much did you get a day?

A. Fifty cents on the start, and was raised to a dollar and fifty cents.

X-Q. 36. What two years was it you were brakeman on a train, &c ? 2969

A. In 1857 and '58.

X-Q. 37. And you were a day laborer in the car shops of that road up to the year 1857 or '58 ?

A. I was.

X-Q. 38. Were you a brakeman on a freight or a passenger train ?

A. On stock and freight.

X-Q. 39. Then that was the same kind of a train you were fireman and engineer on, was it ?

A. It was.

2970

X-Q. 40. Where did you live between the years 1847 and 1857 ?

A. Piermont, N. Y.

X-Q. 41. Do you mean to say that these diamond cars, you have tried to describe, were running on the N. Y. & Erie Road in the year 1857 ?

A. They were, or somewhere thereabouts.

X-Q. 42. What became of either of these diamond cars, if you know ?

A. The last I saw of them they were on the road for the accommodation of trackmen, boarding house cars for the track laborers. 2971

X-Q. 43. Did you ever ride in either one of those diamond cars ?

A. No.

X-Q. 44. How did you happen to come over here and give this testimony to-day ?

A. Well, through a gentleman who came over to the shop and made inquiries about the diamond cars, coming to me as one of the oldest hands, supposing I might know something about them, which I did.

2972

X-Q. 45. You came voluntarily without subpoena, did you, to give this testimony ?

A. No legal paper was served on me ; I came by request.

2973 X-Q. 46. Had you seen and examined this model now before you, before you gave this testimony?

A. I did, but not before I described the whole construction of the cars.

X-Q. 47. What year was it, if you know, that passenger cars quit running to Piermont, from the West and ran to Jersey City?

A. That I couldn't say.

EDMUND SMALLEY.

Attest:

THOMSON H. PALMER,

2974 Special Examiner.

Adjourned to to-morrow, February 8th,
1882, at 11 o'clock A. M.

NEW YORK, Feb. 8th, 1882.

Met pursuant to adjournment.

2975

Counsel appearing as before.

Adjourned to to-morrow, February 9,
1882, at 11 o'clock, A.M.

NEW YORK, Feb. 9th, 1882.

Met pursuant to adjournment.

2976

Counsel appearing as before.

Adjourned to to-morrow, February 10,
1882, at 11 o'clock, A.M.

Henry Masterson—Direct. 745

NEW YORK, Feb. 10th, 1882.

Met pursuant to adjournment. 2977

Counsel appearing as before.

Adjourned to to-morrow, February 11,
1882, at 11 o'clock, A.M.

NEW YORK, Feb. 11th, 1882.

Met pursuant to adjournment.

Counsel appearing as before. 2978

Adjourned to Monday, February 13,
1882, at 11 o'clock, A.M.

NEW YORK, Feb. 13th, 1882.

Met pursuant to adjournment.

Counsel appearing as before.

HENRY MASTERSON, a witness produced by and on
behalf of the defendants, having been duly sworn, tes-
tified as follows : 2979

Q. 1. State your name, age, residence, and occupa-
tion?

A. Henry Masterson ; age, 60 years next July, resi-
dence, Elmira, N. Y., and occupation, machinist, in the
N. Y. , Lake Erie & Western shops.

Q. 2. Did you ever know of any passenger cars be-
ing run and used on the N. Y. & Erie R. R., now known 2980
as the N. Y., Lake Erie & Western R. R., which were
called diamond cars?

A. Yes, sir.

Q. 3. Did you ever run a train on that R. R., as con-

ductor which train had in it one of these diamond cars?

2981

A. Yes, sir.

Q. 4. During what years?

A. From 1846 to 1849.

Q. 5. How many diamond cars did the road have?

A. Two.

Q. 6. Why were they called diamond cars?

A. On account of the shape of the windows.

Q. 7. Please describe the seats in these diamond cars?

2982 A. They were arranged back to back, so that passengers sat face to face; the seats were crosswise of the car with a central aisle. The seats were arranged on both sides of this aisle.

Q. 8. Were the seat frames stationary or loose?

A. They were fast.

Q. 9. How were the cushions, fast or loose?

A. Loose.

Q. 10. Do you know why the cushions were made loose?

A. So you could make a berth of them if you saw proper.

2983 Q. 11. How could you make a berth of them?

A. By moving a little slide or bar, at the aisle across to the opposite seat, and then pulling out the two seat cushions and shoving them toward the center, and then took the backs down and put them where the seat cushions were taken from.

Q. 12. When these seat cushions and back cushions were arranged that way, did it make a flat bed on which you could lie?

Objected to as leading.

2984

A. Yes, sir.

Q. 13. When the seat cushions were brought to the center, what did their ends next to the aisle rest on?

A. On the movable bar.

Q. 14. And what did their ends next to the side of the car rest on?

A. On a resting piece fast to the side of the car, 2985
about three inches wide, I should say.

Q. 15. How many such beds formed by the seat and back cushions supported as you have stated, could be made along each side of the car?

A. Six on a side.

Q. 16. Did you ever convert the cushions into a bed in these cars and lie down on it to rest while the train was running over the road?

A. Yes, sir; a good many times.

Q. 17. Did you see passengers lying down on these beds while the train was running over the road? 2986

A. Yes, sir; a good many times.

Q. 18. When lying down upon the bed thus made in these cars could you look right into the next bed or stick your feet into it?

A. No, sir.

Q. 19. Why not?

A. The seat backs were stationary and made a division between the beds.

Q. 20. What made the cushions stiff and strong enough to be lain down upon? 2987

A. They were made on a board.

Q. 21. Was the distance between the stationary partitions or seat backs long enough for a man to stretch out comfortably in lying down?

Objected to as leading.

A. Yes, sir.

Q. 22. Were these diamond cars narrow cars in width?

A. No, sir; they were quite wide cars. 2988

Q. 23. Please look at the model now shown you marked Defendants' Exhibit Stephenson Car, and state whether or not you ever saw cars constructed like it, and where?

A. I did; I saw them on the N. Y. & Erie R. R., as

2998 I have testified. The cars were constructed and operated like the model, except that the cars had six beds on a side.

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 24. Are you now working at your trade as machinist?

A. Yes, sir.

X-Q. 25. How long have you been in the employ of the N. Y., Lake Erie & Western R. R.?

2990 A. I worked for them the last time since 1861; I left them and came back.

X-Q. 26. Was it a freight train you were conductor of from 1846 to 1849?

A. No, sir; it was called the milk and passenger.

X-Q. 27. What had been your connection with the N. Y. & Erie R. R., prior to 1846?

A. I used to be fireman and what they used to call milk agent and baggage master.

X-Q. 28. These diamond cars had been changed some when you were conductor, had they not?

A. I think not; they were always about the same.

2991 X-Q. 29. You swear positively, do you, that the back cushions in these cars were loose?

A. Yes, sir.

X-Q. 30. Between what points did this milk train run that you were conductor of?

A. Between Piermont and Otisville.

Adjourned to to-morrow, Feb. 14,
1882, at 10 o'clock A. M.

2992

NEW YORK, February 14, 1882.

Met pursuant to adjournment.

Counsel appearing as before.

HENRY MASTERSON—CROSS-EXAMINATION CONTINUED BY
MR. OFFIELD.

2993

X-Q. 31. How long did those diamond cars remain on the New York and Erie Road and where are any of them now?

A. I could not tell; the first I saw of the cars was when I had the handling of them from 1846 to 1849.

X-Q. 32. And you do not know what became of either of them after 1849?

A. I do not.

X-Q. 33. Did either of those cars ever run or were attached to that milk and passenger train of which you was conductor? 2994

A. Yes, sir.

X-Q. 34. How often was one of those diamond cars, during the course of a year, attached to that milk train?

A. Well, I used to run it every day, four days in a week. The car was on the train pretty much every trip.

X-Q. 35. What was the color of the seat cushions and back?

A. They were a black. I call it hair cloth.

X-Q. 36. How many windows were there between each pair of seat backs? 2995

A. There were two large windows; that is diamond shaped windows. There was one at the seat, one over the foot way and one at the next seat.

X-Q. 37. Then there were three windows between each pair of seat backs?

A. There was one opposite each seat and one in the middle; that would make three.

X-Q. 38. How many windows were there in each end of the car? 2996

A. I don't think there was any.

X-Q. 39. Were there any windows in the doors of the car?

A. There was one small window there.

X-Q. 40. Were there any short seats in that car at any place?

A. The seats were all one size.

2997 X-Q. 41. Did you ever ride or sleep in a sleeping car in your life?

A. Only that diamond car. I never slept in any other.

X-Q. 42. Who put it into your head to recollect anything about a bar being stretched across the footway between the seats in that diamond car on which one end of the cushions could rest?

A. It was done by my making the berths up for myself.

2998 X-Q. 43. Who told you, a man that never slept in a sleeping car in his life—to call the space between the backs of that old passenger car a berth? Who put that word in your mouth?

A. Myself.

X-Q. 44. Were you subpoenaed to come here and give this deposition or did you come voluntarily?

A. I came voluntarily.

X-Q. 45. How much are you getting a day as machinist?

A. One dollar and forty cents.

2999 X-Q. 46. What is the reason the road dispensed with your services as conductor, in 1849?

A. I didn't leave the road in 1849.

X-Q. 47. You stopped being conductor then, didn't you?

A. No, sir.

X-Q. 48. When did you leave the road?

A. In 1855.

X-Q. 49. Where did you go then, and for whom did you work?

A. On the Ohio and Mississippi R. R., as conductor.

3000 X-Q. 50. How wide was the bar which you say pulled out from under the seat for the cushions to rest on?

A. I should judge it was about two and a half to three inches, that is as near as I could tell without measuring.

X-Q. 51. What do you expect to receive for your ser-

vices in coming from Elmira here to give this deposition?

A. I expect to receive nothing.

3001

X-Q. 52. Did you come from Elmira to New York for any other reason or purpose except to give this deposition?

Objected to as incompetent, irrelevant and immaterial. Counsel for defendants states for the information of the Court that he requested this witness to come to this city for the purpose of giving his testimony as a personal favor to counsel, not only to economize time but for the more particular reason that the health of counsel's wife is such that she is liable to sudden attacks so prostrating her as to require the presence of counsel with her. This witness, as well as others to be examined, have, therefore, been urgently requested to submit to the inconvenience of leaving their homes and coming to New York city to testify in this cause.

3002

A. Well, I wanted to see some of my folks here. I hadn't been down in twenty-two years.

X-Q. 53. But you did not come for any other purpose except to give this deposition?

A. That is what I came for at Mr. Munson's request.

X-Q. 54. What passenger cars other than these diamond cars ran on the Erie Road from 1846 to '49?

A. There were Eaton & Gilbert's cars, of Troy.

X-Q. 55. Did these cars have opposite facing seats like the diamond cars?

A. No, sir; they were swinging backs.

X-Q. 56. How wide were those Eaton & Gilbert passenger cars?

3004

A. Not as wide as the diamond cars. They were narrower cars.

X-Q. 57. Did you see this diamond model before you went on the stand to testify?

A I saw it yesterday for the first.

3005 X-Q 57. Is there any person else from Elmira coming down here to give any testimony concerning the construction of those diamond cars?

A. I don't know of anybody.

RE-DIRECT EXAMINATION BY MR. MUNSON.

R-D-Q. 59. Is there any mechanic in the shops where you work who receives any more than you do per day?

A. Yes; the mechanics there are paid according to their grade.

3006

RE-CROSS EXAMINATION.

R-X-Q. 60. Are there any mechanics in the shops that get less than you do?

A. No, sir.

HENRY MASTERSON.

Attest:

THOMSON H. PALMER,
Special Examiner.

3008

Adjourned to to-morrow, February
15th, 1881, at 10 o'clock, A.M.

NEW YORK, Feb. 15th, 1882.

Met pursuant to adjournment.

Counsel appearing as before.

3009

STEPHEN SWEET, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows:

Q. 1. State your name, age, residence and occupation?

A. Stephen Sweet; age, 72 next May; residence, Middletown, Orange Co., N. Y., and occupation, Hotel Keeper, I am a tanner and currier by trade. 3010

Q. 2. Were you ever connected with the N. Y. and Erie R. R., now known as the N. Y., Lake Erie and Western R. R., and if yea, please state during what years and in what capacity?

A. I was; from 1841 to 1850. In the first place as agent of the stage company, that ran in connection with that road taking care of the mails and passengers, and for the last four or five years of that time, I was government contractor, carrying the mails in connection with that road and its connecting stage line.

Q. 3. During that period, had you occasion to ride upon that R. R., and how frequently? 3011

A. I had, very frequently. It would probably average in the winter season three or four days a week; in the summer season, probably not more than two.

Q. 4. During that period of time, did you know of the said R. R. company having in use, running upon its road any passenger cars commonly denominated diamond cars?

A. I recollect two, sir.

Q. 5. When were they first put into use upon that road? 3012

A. My impression is, it was 1843, from the position I was then in.

Q. 6. Were they there in use when you left in 1850?

A. They were on the road then.

Q. 7. Why were they called diamond cars, if you know?

A. From the manner in which they were made; the windows stood in diamond form.

Q. 8. Did you frequently during that period ride in these diamond cars? 3013

A. Yes, sir; quite frequently.

Q. 9. Please describe how the seats were arranged in these diamond cars, used as you have stated, on the N. Y. & Erie R. R.?

A. The seats were stationary, their backs were sta-

tionary; they were set face to face and back to back, so that two seats faced each other.

3014 Q. 10. Were the cushions fast or loose?

A. The cushions were loose.

Q. 11. Do you mean the back and seat cushions both were loose?

A. Yes, sir.

Q. 12. Do you know why the seat cushions and back cushions were loose and movable?

A. I know they were loose, and I know we used to make a bed of them to lie down on.

Q. 13. Was there any longitudinal aisle in these diamond cars?

3015 A. Yes, sir. It was a passageway from end to end of the car in the middle, with these seats on both sides of the passageway.

(NOTE.—No question 14.)

Q. 15. Did you yourself ever convert these seat, and back cushions in those diamond cars into a bed?

A. Yes, sir; quite a number of times.

Q. 16. Please explain how it was done?

3016 A. It was done by pulling a stick out from under the seat. It went across the footway at the front part and had a bearing in the opposite seat; then by pulling the two seat cushions towards each other they rested on the stick at the aisle side, and a support on the side of the car. Then by pulling the back cushions down, a bed was formed. The back cushions then lay just where the seat cushions lay before.

Q. 17. Did you ever lie down to rest upon these beds so made in the diamond cars?

A. Yes, sir; quite a number of times.

Q. 18. While running over the road?

A. Yes, sir.

3017 Q. 19. Did you ever see other persons lying down upon the beds so made in the diamond cars, while the cars were running over the road?

A. Yes, sir.

Q. 20. How many such beds were there along each side of these diamond cars?

A. Six or seven on each side, I couldn't say posi-

tively which. Not over seven and there might not have been over six.

Q. 21. Could a person, while lying down upon these beds, look directly into the next bed in either direction or thrust his arms or feet into the next adjacent bed? 3018

A. No, sir. The back of the seat had a vertical stationary board that filled up the whole space from the base of the seat to the top cap.

Q. 22. How much distance was there between two of these vertical stationary boards in the seat backs—I mean between the board of one back and the board of the next back, between which the bed was made by the cushions? 3019

A. I should judge from lying down on it, about six feet, I never measured it.

Q. 23. Please look at the model now shown to you, marked Defendants' Exhibit Stephenson Car, and state whether you ever saw cars constructed and operating like it, and where?

A. It is constructed and operated like the cars used upon the New York & Erie R. R., which I have been testifying about. There are only three sections shown in the model while the cars had six or seven, as I have stated. 3020

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 24. The connection which you had with the N. Y. & Erie R. R., between the years 1841 and 1850 was this, was it not, that you ran a stage which received the mails carried by that road and the passengers arriving on the same train from some certain point on that road between 1841 and 1850, is not that so?

A. I was agent for the stage company from New York City west and up the Hudson River. We sold tickets in N. Y. over the R. R., and our stage line, and we had to take charge of the mails. New York business called me over the railroad almost every day, from Turners to Piermont, to look after passengers and mails. 3021

- X-Q. 25. What was the distance between Turners and Piermont?
- 3022 A. I can't give it exactly; but it is very close to 40 miles.
- X-Q. 26. You never heard those cars called by any other name than diamond cars, did you?
- A. There was a name on both of them. Generally speaking of those cars everybody said the diamond cars. My recollection is, one was called the Ontario and the other the Erie.
- X-Q. 27. You didn't ride in the same car with your mails that you had charge of on that road, did you?
- 3023 A. Not always, sir. We had a mail man. I was in the mail car sometimes and the passenger car sometimes.
- X-Q. 28. It wasn't your duty then, having charge of the mails and travelling with them, as you have testified, to remain in the car with those mails and take charge of them?
- A. Not especially my duty. I had a general supervision of the mails and passengers, and having a man on the train for the mails I used to look after the passengers.
- 3024 X-Q. 28 a. Who was the man or the men who looked after the mails while you were on the train?
- A. The first man was a man by the name of James H. Reynolds. The next man, for a short time, was a man by the name of Millspaugh. I think his name was Leander. Shortly after that the R. R. Co., made a contract to carry the mails, and during that short time a man by the name of Stewart.
- X-Q. 29. A man could almost lie down on each one of the seats of those cars couldn't he without disturbing the seat cushions?
- 3025 A. Couldn't lie out straight on the seat.
- X-Q. 30. How many passenger cars were attached to each train?
- A. Well, in those days they used to have two or three; very seldom over three.
- X-Q. 31. Did the train run from Piermont west, car-

rying the mails all the time between '42 and '51 ?

A. First, for about a year to Goshen. It might have been the best part of two years as far as Goshen ; next 3026
three or four years to Middletown ; and then ran west as far as Port Jervis.

X-Q. 32. Do you know what year the passenger trains on the N. Y. & Erie Road began running from Jersey City instead of Piermont ?

A. I can't tell you exactly the year. It was after I left in 1850 ; after I quit staging.

X-Q. 33. You are quite positive are you not that the passengers in trying to fix a place with the seat cushions to lie down on, did not take those seat cushions and place them crosswise, resting on the seat frames, and thus lie down on them ? 3027

A. I never saw them in that position.

X-Q. 34. And you do not know that it was one of the rules of the Erie Road, between 1842 and for a number of years thereafter, that no passenger was allowed to monopolize those opposite facing seats by lying down and stretching himself across them, and that the conductors were specially instructed to see that the seats or cushions were not monopolized or occupied in that way ?

A. I didn't know of any such rule.

X-Q. 35. Were you subpoenaed to come here and give this testimony or did you come voluntarily ? 3028

A. I came voluntarily at the request of Mr. Munson, who called upon me at my home and asked me to come. I was not subpoenaed.

X-Q. 36. According to your understanding, then, that diamond car was constructed for twelve passengers, six on a side, wasn't it ?

Objected to as incompetent, irrelevant
and immaterial.

3029

A. Sitting down there could two certainly sit on a seat ; three at a pinch. I have sat on a seat with three.

X-Q. 37. Between 1843 and 1850 there was very little

passenger travel according to your idea, was there not,
on the Erie Road ?
3030

Same objection.

A. There was very little travel to what there is to-day. I have seen cars full—trains of two or three cars.

X-Q. 38. But ordinarily that large broad gauge diamond car was sufficient to carry all the passengers that rode on the Erie Road, between 1843 and 1850, was it not ?

Same objection.

3031

A. I should say not, sir.

X-Q. 39. You had been shown the model of that car before you came on the stand to testify, had you not ?

A. I saw it this morning.

X-Q. 40. You had forgotten all about that little bar which slips out from under the seat in that model until you saw it in the model, had you not ?

A. No, sir.

RE-DIRECT EXAMINATION.

3032 R-D-Q. 41. Did you not in your home in Middletown, last week, fully describe to me the construction and operation of the seats and seat cushions in the diamond cars used upon the N. Y. & Erie R. R., including the bar just inquired about, upon my simple request for you to tell me what you remembered about those cars ?

A. I did, sir.

R-D-Q. 42. That was before you saw any model, was it not ?

A. It was, sir.

STEPHEN SWEET.

3033 Attest :

THOMSON H. PALMER,
Special Examiner,

Adjourned to to-morrow, Feb. 16, 1882,
at 10 o'clock A. M.

NEW YORK, Feb. 16, 1882.

Met pursuant to adjournment.

3034

Counsel appearing as before.

WILLIAM H. STEWART, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows :

Q. 1. State your name, age, residence, and occupation ?

A. William H. Stewart, age 71 years, residence Waverly, Tioga Co., N. Y.; my business is fruit gardener.

3035

Q. 2. Were you not formerly a conductor in the employ of the N. Y. & Erie R. R., now known as the N. Y. Lake Erie & Western R. R., as conductor ?

A. Yes, sir.

Q. 3. From when to when as conductor ?

A. From 1844 to 1852 inclusive.

Q. 4. While employed as conductor on said R. R., was there any passenger cars used by said R. R. Co., which were known as diamond cars ?

A. Yes, sir, two.

Q. 5. Why were they called diamond cars, if you know ?

3036

A. From the diamond windows in the cars.

Q. 6. Were these diamond cars in use by the company when you commenced running as conductor in 1844 ?

A. Yes, sir.

Q. 7. Were they still there when you ceased to be a conductor in 1852 ?

A. They were there but not running in the train.

Q. 8. Did the train, of which you were conductor, have one of these cars attached ?

3037

A. Occasionally.

Q. 9. Were you perfectly familiar with those diamond cars ?

A. Yes, sir.

- Q. 10. Please describe the arrangement of the seats in those cars ?
- 3038 A. The seats were crosswise and stationary, that is back to back, and each two seats faced each other. The extreme end seats were up against the ends of the car. They were single seats but that brought two seats facing each other, the same all through the car.
- Q. 11. Any aisle in the car ?
- A. Yes, sir ; a centre aisle with seats on both sides of it.
- Q. 12. Any cushions for the seats ?
- A. Yes, sir.
- 3039 Q. 13. Fast or loose ?
- A. They were loose—movable.
- Q. 14. Do you mean that the seat and back cushions were loose or movable ?
- A. Yes sir ; both the seat and back cushions.
- Q. 15. Do you know why the seat and back cushions were made loose or movable ?
- A. They were movable to make into a couch to lie down on.
- Q. 16. Did you personally ever make them into a lounge to lie down upon ?
- 3040 A. Yes, sir.
- Q. 17. How did you accomplish it ?
- A. I slid the two seat cushions together. There was a bar in front of the seat to draw out which was first put across from seat to seat, then I slid the cushions towards each other ; they rested on the sill of the car and on this bar, then I drew down the back cushions to rest where I took the seat cushions from.
- Q. 18. This bar that you drew from one seat across to the other, was it next to the aisle or next to the wall of the car ?
- 3041 A. Next to the aisle.
- Q. 19. When these cushions were thus arranged to form the couch, did it make a flat couch ?
- A. Yes, sir.
- Q. 20. Did you ever lie down on a couch thus made

in those diamond cars, and rest while the car was running over the road ?

A. Yes.

3042

Q. 21. Did you see others lie down on a couch thus made in said car while it was running over the road ?

A. Yes.

Q. 22. Do you remember any particular occasion upon which you converted these seat and back cushions in that car into a couch as you have described ?

A. Yes, sir ; one evening we were westward bound, there were two ladies in the car and one of them was very unwell, and I made up the couch and she lay down upon it.

3043

Q. 23. While lying or reclining upon the couch made as you have described, in those diamond cars, could you look forward or rearward, directly into the next couch or thrust your arms or feet into either of the adjacent couches ?

A. No, sir.

Q. 24. Why not ?

A. The back of the seat was stationary—a vertical partition—that you couldn't reach through or get your feet through, either one.

Q. 25. Those stationary partitions in the seat backs, were they like or did they have any correspondence with any part of a common bed, when the cushions were arranged as a couch ?

3044

A. It made a very nice couch to rest on, whether it was like a common bed or not.

Q. 26. A common bed has a portion to lie down upon and at the head and foot, has what are termed head and foot boards, was there anything in this diamond car when the cushions were made into a couch that corresponded with the head and foot boards of an ordinary bed ?

3045

A. Yes ; the stationary backs of the seats formed a head and foot board.

Q. 27. These cushions, do you remember what, coverings they had upon them ?

A. Hair cloth covers.

Q. 28. How many such couches could be made on each side of the car ?
3046 A. Six or seven, I should think. I don't remember particular.

Q. 29. Have you ever seen a model or any other delineation or representation of these diamond cars you have been testifying about, or any part of them ?

A. No, sir.

Q. 30. I now show you a model, marked Defendants' Exhibit Stephenson Car, and ask you whether you have ever saw a car constructed and operating like this model, and where ?

3047 A. Yes, sir ; it is made and works like the cars I have been testifying about, used on the N. Y. & Erie R. R., except the color of the cushions and the number of the couches ; there are only three couches in the model and there were six or seven on a side in the cars, as I have stated. It is an exact fac-simile of the cars.

Q. 31. What was the distance of space between the fixed partitions in the backs of the seats or head boards when the couch was made ?

A. Well, I should judge about six feet, I never measured them, I could lie full length in it.

3048

(Model removed from sight.)

Q. 32. Please state your height ?

A. I am five foot nine or ten inches, and I was about that height when I used those cars.

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 33 What kind of a train was it upon which you were conductor, on the N. Y. & Erie R. R., from 1844
3049 to 1852 ?

A. Passenger.

X-Q. 34. Between what two points did you run during that time ?

A. Well, I run from Piermont, Middletown, Otisville, Port Jervis, Binghamton, Elmira and Dunkirk.

X-Q. 35. How long were either of these two diamond cars, used or run on the passenger trains of the N. Y. & Erie Road, after the year 1844? 3050

A. That I couldn't say; I used them occasionally while I was employed on the eastern division. I went into the western division in 1851, and they were in use on the eastern division then.

X-Q. 36. What then constituted the eastern division, between what two points of the N. Y. & Erie Road?

A. From Piermont to Port Jervis.

X-Q. 37. And you never knew of either of these diamond cars running on the western division?

A. No.

X-Q. 38. How many times will you swear that you ever ran a train on the New York & Erie R. R., with either of these two diamond cars attached? 3051

A. I couldn't, any positive number; several times, though.

X-Q. 39. Will you swear to ten times?

A. I wouldn't swear to any positive times; I would put it seven times.

X-Q. 40. And your familiarity with those two diamond cars or either of them arose out of the fact of their being attached to the train these different times when you were conductor, is that so? 3052

A. Yes, sir.

X-Q. 41. How many passenger cars usually composed the passenger train on the N. Y. & Erie Road of which you was conductor between 1844 and 1852?

A. They would vary; we never drewed more cars than we had passengers for.

X-Q. 42. When a passenger lay down on the seat cushions of any of the seats of those diamond cars there was nothing to prevent him from looking forward directly into the next seat across the aisle, was there? 3053

A. After it was made into a couch do you mean? They frequently lay down on the seats.

X-Q. 43. You are quite certain, are you, that you recollect this bar underneath the seats at their aisle

edge, that a passenger could pull out and block up the entrance to the opposite facing seats?

3054 A. I never knew a passenger to pull one out. I remember the bar perfectly.

X-Q. 44. How often were those seat cushions upholstered in the diamond cars while you were conductor?

A. I never knew them to be.

X-Q. 45. Were you subpoenaed to come here and give this deposition or did you come voluntarily?

A. I wasn't subpoenaed.

RE-DIRECT EXAMINATION BY MR. MUNSON.

3055 R-D-Q. 46. Did you not frequently go into one or the other of these diamond cars while they stood in the yard at Piermont?

Objected to as leading, and because the witness has already testified to his grounds of familiarity with these cars.

A. Yes, sir.

3056 R-D-Q. 47. And make up and lie down upon the couches in them while waiting for the arrival of the boat from N. Y. and similar occasions?

Objected to as leading.

A. No, sir; I never did.

W. H. STEWART.

Attest:

THOMSON H. PALMER,
Special Examiner.

3057 Adjourned to to-morrow, Feb. 17th,
1882, at 10 o'clock A. M.

William L. Beakes—Direct. 765

NEW YORK, Feb. 17, 1882.

Met pursuant to adjournment. 3058

Counsel appearing as before.

Adjourned to to-morrow, Feb. 18, 1882,
at 10 o'clock A. M.

NEW YORK, Feb. 18, 1882.

Met pursuant to adjournment. 3059

Counsel appearing as before.

Adjourned to Monday, Feb. 27, 1882,
at 10 o'clock A. M.

NEW YORK, Feb. 27, 1882.

Met pursuant to adjournment. 3060

Counsel appearing as before.

Adjourned to to-morrow, Feb. 28, 1882,
at 10 o'clock A. M.

NEW YORK, Feb. 28, 1882.

Met pursuant to adjournment. 3061

Counsel appearing as before.

WILLIAM L. BEAKES, a witness produced by and on

behalf of the defendants, having been duly sworn, testified as follows :

3062

Q. 1. State your name, age, residence and profession ?

A. William L. Beakes ; age, nearly 58 ; residence, Middletown, N. Y., and I am not at present in any business, I am a lawyer by profession.

Q. 2. Where were you employed during the years 1843-'4-'5 and '6 ?

A. In Middletown, N. Y., with Stacy and Henry S. Beakes general merchandisers.

3063

Q. 3. Did that firm during said years ship large quantities of freight over the N. Y. and Erie R. R., now known as the N. Y., Lake Erie & Western R. R. ?

A. They did

Q. 4. Were you not occasionally required to run over that road in connection with the freight shipped by your employers ?

A. I was.

Q. 5. Did you ever know of cars being used upon that R. R. known as diamond cars ?

A. Yes, sir ; two cars called the Erie and Ontario.

3064

Q. 6. Did they run on that R. R., between the years '42 and '47, which was the period of your employment with the firm of Stacy and Henry S. Beakes ?

A. Yes, sir.

Q. 7. Were you familiar with the construction of those cars ?

A. I saw them quite considerable and was familiar with them.*

Q. 8. Did you ever particularly examine the construction of the seats or have it shown to you ?

A. I did.

Q. 9. When was this occasion ?

3065

A. In 1843.

Q. 10. Please describe how the seats were arranged in those cars ?

A. The seats set back to back, so that every two seats faced each other.

Q. 10a. Were the seat frames stationary or movable ?

A. The seat frames were permanent.

Q. 10 *b*. Were the seats and backs cushioned?

3066

A. They were.

Q. 10 *c*. Were the seat cushions and the back cushions fast or loose?

A. They were loose.

Q. 10 *d*. What direction had these seats with respect to the car?

A. There was an aisle in the center of the car with seats each side of it.

Q. 10 *e*. Were the seats lengthwise or crosswise of the car?

A. Crosswise.

Q. 10 *f*. Was there any advantage in having the seat and back cushions loose?

3067

A. Yes; I think there was from what I saw done with them.

Q. 11. What did you see done with the loose seat and back cushions of the seats in those cars?

A. I saw them made into a bed.

Q. 12. Please state under what circumstances?

A. One Sabbath I was in the car and they took the cushions and made a bed of them. He took and raised up the cushions and pulled a stick across from under the seat and put it into a hole in the facing seat. This stick was next to the aisle of the car. He then took the seat cushions and pulled them to the center, and then put the back cushions down right behind them.

3068

Q. 13. Did these back cushions then lie where the seat cushions had been taken from?

A. They did.

Q. 14. Did the four cushions then lie horizontally and fill the space between two opposite seat backs?

A. Yes; they laid flat and filled it all up full.

Q. 15. Did these sticks that they pulled across from seat to seat next to the aisle slide?

3069

A. Yes; they slid right out.

Q. 16. They then supported the end of the seat cushions next to the aisle, did they?

A. Yes, sir.

- Q. 17. What supported the ends of the seat cushions next to the wall of the car ?
- 3070 A. There was a piece run along that had a square groove chamfered in it that was fast to the wall of the car.
- Q. 18. Were these seat cushions constructed like cushions are made now days ?
- A. I think not.
- Q. 19. How were they made ?
- A. On a solid board.
- Q. 20. Was this bed made up out of the seat cushions on this Sabbath by an employee of the road to show you the construction and mode of operation ?
- 3071 A. It was.
- Q. 21. What was his name ?
- A. Asa Faulkner.
- Q. 22. Is he living ?
- A. I think he died last summer or fall.
- Q. 23. Were any others present on this occasion ?
- A. There was. John B. Jackson, J. W. Monell, John Nichols, Elisha Reeve, and the youngest son of John Bailey.
- Q. 24. Any of these parties living ?
- 3072 A. I do not know whether Bailey is dead or not; the rest of them are all dead.
- Q. 25. Was this a party of gentlemen taken into that car on that occasion for the purpose of being shown its construction and operation ?

Objected to as leading.

- A. They were.
- Q. 26. How many beds were made up from the seat cushions on that occasion ?
- 3073 A. Six or seven.
- Q. 27. All on one side of the car ?
- A. Yes, sir.
- Q. 28. Do you mean that they made the whole of one side of the car up into beds ?
- A. Yes, sir; they did.

Q. 29. Was there an open space left right through the car immediately above the cushions when they were down as beds. I mean so that a person lying down on one bed could stick his feet into the next bed? 3073

A. No, sir. There was a board between them that came up between each two seats where they set back to back. It was a stationary board and it came up as high as the top rail of the seat backs.

Q. 30. Did you lie down on one of those beds at that time?

A. I did.

Q. 31. How long was that bed between the stationary boards or partitions between the seats?

A. I should think it was fully six feet, judging by my own length. 3074

Q. 32. What was your length?

A. A fraction over six feet.

Q. 33. Did you ever see the beds in either of these cars made up while running on the road?

A. Once, that I remember.

Q. 34. Please look at the model now shown to you, marked Defendants' Exhibit Stephenson Car, and state whether or not you ever saw any car constructed and operating like it, and where?

A. These two diamond cars I have been testifying about were made and operated like it. 3075

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 35. Were you subpoenaed to come here and give this testimony, or did you come voluntarily?

A. I was asked by counsel, Mr. Munson, whether I would come, or put him to the trouble to get the papers. I consented to come, and was not subpoenaed.

X-Q. 36. You had seen and examined this model, particularly the stick under the seats, before you came on the stand? 3076

A. I saw it yesterday.

X-Q. 37. How long has it been since you tried a case in court or acted as a lawyer in any manner whatever?

3077 A. It is a month or six weeks since I tried a case in a Justice's court.

X-Q. 38. How long has it been since you tried a case in a court of record?

Objected to as incompetent, irrelevant, and immaterial.

A. Never tried one in a court of record in my life.

3078 X-Q. 39. When was that Sunday that you have told this narrative about you and six or seven dead men seeing those seat and back cushions laid flat between the seat backs?

A. It was in the fall of '43; the men were alive then.

X-Q. 40. The only times that you pretend to have any recollection of ever seeing the seat and back cushions of those two diamond cars or any of them laid flat between the seat backs was that Sunday you told about and one other occasion while the car was running?

A. Those are the only times I had occasion to look at it.

3079 X-Q. 41. If you can think of any person who is not dead who saw those seat and back cushions laid flat while the car was running, please give their names, but don't mention any more dead men?

A. I can't mention only those that was with me; that they are dead is their misfortune.

X-Q. 42. What was the nature of your employment between '42 and '47 with the firm of Stacy and H. S. Beakes?

3080 A. I was clerk part of the time on a freight train and part of the time went to New York for them to purchase goods, and was clerk in their store a good part of that time, and a part of the time in Sullivan County about their lumber interests.

X-Q. 43. Who was it took you into one of those diamond cars in the fall of 1843, and what business did he have going into the cars?

A. Asa Faulkner; he was a brakeman and sold newspapers on the train.

X-Q. 44. How many of these movable seats and backs of the diamond car did you see lain down flat between the seat backs at the time the car was running on the road? 3081

A. One.

X-Q. 45. What year was that, and who was the conductor?

A. I think it was 1844; I don't remember the conductor's name.

X-Q. 45a. In the fall of 1843, that Sunday when you and that deceased brakemen went into that diamond car, was the first time you ever knew that the seat and back cushions of those cars could be moved, wasn't it? 3082

A. It was the first that I knew that they could pull them out and fix them around—I mean into a bed

X-Q. 46. How often did you travel to New York each year between '42 and '47?

A. I couldn't tell you the number of times; quite a good many times.

X-Q. 47. You are quite certain, are you not, that these loose seat cushions were not placed crosswise of the frames when you saw them moved?

A. They laid from the side of the car to the aisle crosswise of the car. 3083

RE-DIRECT EXAMINATION.

R-D-Q. 48. What made them call them diamond cars?

A. The only reason that I can give is that others called them so, and from the shape of the windows.

R-D-R. 49. Was it just after these diamond cars had commenced to run on the road that you were shown their bed arrangement?

A. The same fall. 3084

R-D-Q 50. Had you not fully described the construction and arrangement of the seats, their movable cushions and supporting sliding stick, and the mode of making the cushions into beds and back into seats, to me once at Middletown, N. Y., your home, and once in

3085 New York City before you saw any model of the diamond cars you have testified about ?

A. Yes, sir ; I have told you more than you asked me.

R-D-Q. 51. What more than I asked you ?

(Witness asks to see the model which has been out of sight.)

3086 A. Referring to the model, I explain that this bar (taking hold of the sliding bar) had a little lip on it at the end that caught over the edge of the hole in the seat rail so that it could not be pulled back without being slightly raised up.

R-D-Q. 52. Didn't you also tell me that you remembered that the ends of the seat cushions, when down as a bed, abutted against the forward ends of the arms of the seats so that they would not slip forward out into the aisle ?

A. I told you that in Middletown.

W. L. BEAKES.

Attest :

3087

THOMSON H. PALMER,
Special Examiner.

Adjourned to to-morrow, March 1, 1882,
at 10 o'clock A. M.

NEW YORK, March 1, 1882.

3088

Met pursuant to adjournment.

Counsel appearing as before.

Adjourned to to-morrow, March 2, 1882,
at 10 o'clock A. M.

NEW YORK, March 2, 1882.

Met pursuant to adjournment.

3089

Counsel appearing as before.

Adjourned to to-morrow, March 3, 1882,
at 10 o'clock A. M.

NEW YORK, March 3, 1882.

Met pursuant to adjournment.

Counsel appearing as before.

3090

MILTON GRIFFIS, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows :

Q. 1. State your name, age, residence and occupation?

A. Milton Griffis ; age, 60 years ; residence, Montrose, Susquehanna County, Pa., and occupation carpenter and builder.

Q. 2. Were you ever employed by the New York and Erie Railroad, now known as the New York, Lake Erie and Western Railroad? 3091

A. I was.

Q. 3. From when to when?

A. From '47 to '54.

Q. 4. What was your employment during that time?

A. I was conductor of freight and wood trains.

Q. 5. Did you ever know of passenger cars being run upon that railroad which were known as diamond cars?

A. I did. They were running when I went there, two of them. 3092

Q. 6. Why did they call them diamond cars?

A. From the shape of the windows.

Q. 7. Did you ever become familiar with the internal construction of either of those cars, and when?

A. I did become familiar with them in 1850.

3093 Q. 8. Under what circumstances?

A. I was at that time running as conductor of a wood train on that road, and had in my employ quite a number of men. The railroad was new at that time, and the country being new, I could find no place to lodge my men. I was talking to Mr. Parish about this matter, and he wanted to know why I didn't get one of these diamond cars, as they were constructed for that purpose. Upon his suggestion I went into one of them and examined it to see how it was constructed.

Q. 9. Constructed for what purpose, and how?

3094 A. For sleeping purposes.

Q. 10. When you went into this diamond car in 1850, did it have any beds made in it for sleeping purposes?

A. Not any beds.

Q. 11. I mean did it have any of its sleeping couches made ready to lie down upon?

Objected to as leading.

A. It did.

3095 Q. 12. Did you make up with your own hands, at that time, any of these sleeping couches?

A. I did.

Q. 13. Please describe how the seats were arranged in this diamond car you went into and examined in 1850?

3096 A. Every two seats were back to back and face to face. In the seats that set face to face, next to the aisle, there was a bar that drew out from under one seat, and drew across the foot space and entered a corresponding hole in the rail of the opposite seat. After that bar was put across, you took the seat cushions and put them, one end on this bar and the other end on the trussle plank, at the side of the car, then you took the back cushions down and laid them where the seat cushions were. The cushions then all laid flat.

Q. 14. Did you do that yourself with the cushions

and seats of this diamond car you examined in 1850 and at that time?

A. I did ; yes, sir.

3097

Q 15. Did you lie down upon the bed or couch you thus made at that time?

A. I did ; yes, sir.

Q. 16. Could you stick your feet right into the next couch?

A. No, sir.

Q. 17. Why not?

A. Because there was a partition of boards went right up between the backs of the seats.

Q. 18. Was it a stationary or movable partition?

3098

A. It was stationary.

Q. 19. How far apart were these stationary partitions at the ends of the couch you made up?

A. I couldn't tell exactly, but I laid down in them, and I am five feet ten, and I had plenty of room.

Q. 20. Were these seat and back cushions that you moved forward and laid flat to form a couch longitudinal or crosswise of the car?

A. They were crosswise and one end rested on this bar.

Q. 21. I understand that you could put these cushions back into place to form facing seats again, and slide the bar out of the way, is that so?

3099

A. That is so yes, sir.

Q 22. From your description, I understand these seats to have been across seats, is that so?

A. That is so.

Q. 23. Were these seats on one side of the car only?

A. They were on both sides, with a central aisle, from end to end of the car, between them.

Q. 24. What did you do about this diamond car after you found that it had facing seats along each side the cushions, of which could be converted into sleeping couches?

3101

A. I went to Mr. S. S. Post, who was then the Supt. of the Eastern Division, and asked him for that car to

attach to my wood train for sleeping purposes for my men.

3102 Q. 25. Did you get it?

A. I did not.

Q. 26. Why not?

A. Mr. Post said they could not spare it for that purpose as they were short of rolling stock, and they had to use it occasionally on passenger trains.

Q. 27. Did you go into it and examine it again after the time you have told us about?

A. I did; yes, sir.

Q. 28. For what purpose and what did you do?

3103 A. I went in for the purpose of making a sketch or diagram of the sleeping arrangements

Q. 29. Did you make it?

A. I did; yes sir.

Q. 30. Where is it?

A. I think it is among my papers at home. I made a search for it but could not find it

Q. 31. Why did you make it?

A. To see if I couldn't convert some freight cars into sleeping cars for my men.

Q. 32. Did you so convert those cars?

3104 A. Not on the same principal, because it was found to be too expensive for my purposes, and we constructed them—that is put bunks or shelves into the freight cars in a much cheaper way.

Q. 33. In the diamond cars you have testified about, how many couches could be made on a side?

A. I couldn't tell you exactly, but I think it was six, seven or eight on a side.

Q. 34. Were the seat and back cushions flexible like a pillow?

3104 A. No, sir; they were stuffed with something and put into a frame so as to keep their shape when handled and put in different positions, they had a board bottom.

Q. 35. Have you ever seen a model or any other representation of that diamond car or its seat or couch

arrangement, since the time you examined it in 1850, and made your own sketch of it?

A. No, sir.

3105

Q. 36. When you left the road in 1854 were the two diamond cars there on the road?

A. They were.

Q. 37. Please look at the model now shown you marked Defendants' Exhibit Stephenson Car and state whether or not you ever saw a car constructed and operating like it, and where?

A. I have. It is like the two diamond cars I have been testifying about. They were made just as that model shows. There were more seats on a side in the cars than the model shows.

3106

(Model removed from sight of witness.)

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 38. As I understand you, the only times that you were into the interior of those two diamond cars or either of them were the two occasions you have mentioned in your testimony, in the year 1850?

A. Yes, sir.

3107

X-Q. 39. In the year 1847 and between that and 1854 the N. Y. & Erie Road had cabooses fitted up with shelves or bunks, one above the other, for their men to sleep in, did they not?

Objected to as incompetent, irrelevant and immaterial.

A. They did not.

X-Q. 40. They had cabooses during some of those years attached to the stock or freight trains in which were shelves along the side of the caboose for the men to lie down on, were there not?

3108

Same objection.

A. They did not.

3109 X-Q. 41. Where is this Mr. Parish that you mentioned in your direct testimony who wanted you to get one of these diamond cars for the men to sleep in?

A. I could not tell where he is.

X-Q. 42. Where was this diamond car upon those two occasions when you went into it?

A. The first time I went into it, it stood on the side track at Piermont; the second time on the side track at Sufferns

X-Q. 43. Who was with you upon either of those two occasions when you went into that diamond car?

3110 A. I think that I was alone both times.

X-Q. 44. The only use that would be made of a sleeping caboose for railroad hands to sleep in at night—wood-choppers, for instance—would be to side-track the car near where the wood was being cut as a place for them to sleep in at night; isn't that so?

A. I don't know whether it is so or not. I never had any wood-choppers. The use that I wanted of a sleeping car was to attach it to my train when I was running from place to place, for the men to sleep in?

3111 X-Q. 45. They burned wood in the passenger cars between 1847 and '54 on the Erie Road, did they not?

Same objection.

A. They did principally, and I think they did altogether.

X-Q. 46. What was the length of that wood cut for the stoves?

Same objection.

3112 A. Some stoves would take in two-foot wood and some would have to have four foot wood sawed in two twice.

X-Q. 47. You are quite certain, ain't you, that it wasn't a two foot stick of stove wood that you pulled out from under the seats and placed across from seat

frame to seat frame and then rested one end of the cushions on this to lie down at the time you have been attempting to testify about? 3113

A. I am quite certain.

X-Q. 48. Were you subpoenaed to come here to give this testimony or did you come here from Montrose, Pa., voluntarily to give this deposition?

A. I came here upon the request of Mr. Munson. I was not subpoenaed.

MILTON GRIFFIS.

Attest:

THOMSON H. PALMER,
Special Examiner. 3114

Adjourned to to-morrow, March 4th,
1882, at 10 o'clock, A. M.

NEW YORK, March 4, 1882.

Met pursuant to adjournment.

3115

Counsel appearing as before.

Adjourned to Monday, March 6, 1882,
at 10 o'clock A. M.

NEW YORK, March 6, 1882.

Met pursuant to adjournment.

Counsel appearing as before. 3116

Adjourned to to-morrow, March 7, 1882,
at 10 o'clock A. M.

NEW YORK, March 7, 1882.

3117

Met pursuant to adjournment.

Counsel appearing as before.

Adjourned to to-morrow, March 8, 1882,
at 10 o'clock A. M.

NEW YORK, MARCH, 8, 1882.

Met pursuant to adjournment.

Counsel appearing as before.

3118

Adjourned to to-morrow, March 9, 1882,
at 10 o'clock A. M.

NEW YORK, March 9, 1882.

Met pursuant to adjournment.

Counsel appearing as before.

Adjourned to to-morrow March 10,
1882, at 10 o'clock A. M.

3119

NEW YORK, March 10, 1882.

Met pursuant to adjournment.

Counsel appearing as before.

Adjourned to to-morrow, March 11,
1882, at 12 o'clock M.

NEW YORK, March 11, 1882.

3120

Met pursuant to adjournment.

Counsel appearing as before.

Adjourned to Monday, March 13, 1882,
at 1 o'clock P. M.

NEW YORK, March 13, 1882.

Met pursuant to adjournment.

3121

Counsel appearing as before.

CALVIN A. SMITH, a witness produced by and on behalf of the defendants having been duly sworn, testified as follows :

Q. 1. State your name, age, residence and occupation ?

A. Calvin A. Smith ; age, 58 ; residence Jersey City, New Jersey ; and I have charge of the Union Tank Line Cars, as the master car builder of that Company. 3122

Q. 2. Were you ever in the employ of the New York & Erie R. R., now called the New York, Lake Erie & Western R. R. ?

A. I was ; I entered its employ in 1851, and in 1854 I was made foreman of its Piermont shops.

Q. 3. Did you ever construct for that company any caboose cars which were used upon that railroad for the sleeping accommodation of drovers, travelling with stock trains ?

3123

A. I did ; I built two such cars.

Q. 4. When ?

A. Some time between 1854 and 1860 ; the exact date I cannot give.

Q. 5. Did they go into use upon that road ?

A. They did, and they were used for some years on the Eastern Division.

Q. 6. How many such cars did you construct ?

A. Two or more.

Q. 7. Please describe their construction ?

A. They were about twenty-one feet long, and had a central passageway from end to end. They had three sections of berths on each side along the wall of the car. Each section had an upper and a lower berth, each berth was about six feet long and two feet six inches wide. The lower berths were made on a locker 3124

—that is, there was a box-like structure, which formed a locker for trainmen's tools ; each locker was about
3125 six feet long, and had a hinged lid, and upon this lid a loose cushion was placed, making the lower berth. The upper berths were made like a box or tray about two feet six inches wide, six feet long and about four inches deep. This box was hinged at the upper edge of its back or wall side to the side of the car. It had in it a loose cushion. When it was to be used to sleep in, it was let down into a horizontal position and secured by a hooked rod near each end. Each rod was fastened to a bow of the car by its upper end, and its hooked
3126 lower end entered into an eye secured near the end of the upper berth on its front or aisle side. In the day-time, or when not in use to sleep on, this berth was turned up towards the wall of the car at an angle until its front edge struck the carlines, and was secured in that position by bolts which shot up behind stops or catches. The hooked rods were then turned up parallel with the car roof, and hooked in that position on little hooks attached to the carlines.

Q. 8. When these upper berths were turned up at the angle and fastened, and the hooked rods were secured near the roof, was there a clear space left above
3127 the lower seats or berths ?

A. There was.

Q. 9. Please look at the model now shown to you, and state whether you ever saw cars constructed and operating like it, and where ?

A. I should say that that model is as near as can be like the cars constructed by me as stated and used on the New York and Erie R. R., for drovers' use. That is the one section of berths that it shows is constructed and operates like those cars.

3128

Model referred to filed in evidence on behalf of the defendants, and the same is marked Defendants' Exhibit Erie Car, Thomson H. Palmer, Special Examiner.

Q. 10. Did not the drovers, in using the berths in these cars, travel as passengers?

A. I can't say, I don't know whether they paid any fare or not. 3129

Q. 11 They were not employees of the road, were they?

A. I should say not. Those drovers travelled for the purpose of taking care of their own stock, which was on the same train as these cars.

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 12. The lower berth which you speak of in that caboose car was simply a cushioned bench along each side of the car, upon which the drovers could lie down when they got tired, was it not? 3130

A. Yes, sir.

X-Q. 13. This was a continuous bench along each side of the caboose, was it not?

A. It was divided into three sections.

X-Q. 14. What divided the bench into three sections?

A. The benches were made about six feet long, so they could be turned up for trainmen, to take out something from the box underneath. 3131

X-Q. 15. Then the top of the boxes or the bench was hinged every six feet, is that it?

A. I did not say hinged. My impression is that the covers were hinged, and were about six feet long; they were movable covers.

X-Q. 16. Did these upper hinged hanging shelves hang directly over the six feet of movable bench below?

A. They did.

X-Q. 17. Each drover let down his shelf and turned in when he felt like it, didn't he, in that car?

A. I couldn't say, but do not think they had any conductors or porters to attend to that business. 3132

X-Q. 18. Did there more than one of these cabooses run on a single stock train?

A. I should think not.

X-Q. 19. When was the first sleeping car, to your

3133 knowledge ever run on the Erie Road upon passenger trains?

Objected to as incompetent, irrelevant and immaterial.

A. I can not say positively, but either in 1859 or 1860.

X-Q. 20 Was this sleeping car or those cars constructed under any letters patent of the United States, and if so, whose?

Same objection.

3134

A. I could not say.

X-Q. 21. What were the car called?

A. They were called sleeping cars.

X-Q. 22. Who was accredited with the designing or invention of those sleeping cars which went on the Erie Road in 1859 or 1860?

Same objection.

3135 A. If I remember correctly, there were two or three parties interested; beyond that I couldn't say anything.

X-Q. 23. Aside from these side seated and upper shelf cabooses described by you, were there any other cars on the Erie Road, which carried passengers that had any kind of sleeping devices or arrangements in them between the years 1851 and 1859?

A. I do not think any other devices were used for passengers lying down prior to 1859.

X-Q. 24. Do you know what became of either of those caboose cars?

3136 A. I have an impression that one of them was entirely destroyed and wrecked.

X-Q. 25. Was there any partition of any kind separating or dividing these benches or shelves at their ends one from another?

A. There was not, either for day or night use.

C. A. SMITH.

3137

Attest:

THOMSON H. PALMER,

Special Examiner.

Adjourned to to-morrow, March 14th,
1882, at 11 o'clock A. M.

NEW YORK, Mar. 14, 1882.

3138

Met pursuant to adjournment.

Counsel appearing as before.

Adjourned to to-morrow, March 15,
1882, at 10 o'clock, A. M.

NEW YORK, March 15, 1882.

Met pursuant to adjournment.

3139

Counsel appearing as before.

Adjourned to to-morrow, March 16,
1882, at 10 o'clock, A. M., at Springfield,
Mass.

SPRINGFIELD, Mass., }
March 16, 1882. }

Met pursuant to adjournment.

3140

Counsel appearing as before.

ANDREW J. CHAPIN, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows:

Q. 1. State your name, age, residence and occupation ?

3141 A. Andrew J. Chapin ; age, 55 ; residence, Springfield, Mass., and occupation car accountant of the Boston & Albany R. R.

Q. 2. Were you ever in the employ of the Western R. R., the predecessor of the Boston & Albany R. R., and if yea, when did you enter its employ, and in what capacity ?

A. I was ; I entered its employ in September, 1847, as brakeman.

3142 Q. 3. When you entered its employ had the said road in use a passenger car the interior of which was divided into compartments ?

A. At the time I entered its employ, or shortly after. It was certainly as early as during the year 1848 that I knew of that road having in use such a car, by reason of my examining and using it. It was used on the train that I ran on. It was a freight train leaving Springfield at about 6 P. M., and running to Washington, Mass., where it arrived about 10 P. M. We would remain there from two to three hours and then return to Springfield, arriving there at from three to four o'clock A. M.

3143 Q. 4. Was this car used as a passenger car upon this train ?

A. Yes, sir ; but we had three passenger cars which were used in this freight train, sometimes one, sometimes another, and sometimes all of them.

Q. 5. Were these cars alike in their external appearance ?

A. Yes.

Q. 6. Were they all three compartment cars ?

3144 A. No, only one ; the other two were regular passenger cars, with swing back seats

Q. 7. Please describe the arrangement of the compartments in this compartment car ?

A. It was a car divided into three compartments on a side by two solid partitions running up to the roof and clear to the floor, and from the aisle to the

side of the car; there was a central aisle or passageway from one end to the other of the car. The seats were cross seats, a seat against each partition and against each end of the car, the seats in each compartment facing each other. Each seat had at the aisle side a vertical board end, and on top of this board end was a cap or arm. 3145

Q. 8. How were the seats cushioned?

A. With soft cushions—movable cushions—they were flexible cushions, that is were not on any framework. The back cushions were formed on the partitions and ends of the car by padding or stuffing which reached as high as the head of a person when sitting upon the seats. The material of which the cushions and upholstering were made was drab in color. The partitions and ends of the car and roof were lined with cloth, and I think also the sides of the car, what wall surface there was. 3146

Q. 9. Did you ever know of any arrangement being made with the cushions in this compartment car whereby a bed was made between the partitions or in one of the compartments to lie down upon while this car was in use with your freight train?

A. Yes. I have done it myself a good many times. I would take the cushion off and lay a board, which I carried for the purpose, across from one seat to the other and lay the cushion on it and lie down on this cushion, using the other cushion as a pillow. 3147

Q. 10. How much distance was there between these partitions to enable you to lie down?

A. It was five or six feet; not less than five nor more than six feet. As I picture the car in my mind there was a wide space between the seats and the seats were wide. I should say considerably wider than they are at present, and the distance was certainly five feet. 3148

Q. 11. How long did you run this car connected with this freight train?

A. One or two years. It was as near two years as it was one.

Q. 12. Did other persons connected with this train lie
3149 down in that car the same as you did?

A. Yes ; the other brakemen.

Q. 13. Have you ever seen a model purporting to re-
present this car?

A. I never have.

Q. 14. Please look at the model I now show you, and
state whether you ever saw a car constructed like it,
and where?

A. It is constructed like the one I have been testify-
ing about. It is a correct representation of that car ex-
cept that the space between the seats does not look to
3150 me to be wide enough in proportion. The cushions are
not any too wide.

Model referred to filed in evidence on
behalf of the defendants, and the same is
marked Defendants' Exhibit Springfield
Car. Thomson H. Palmer, Special Ex-
aminer.

Q. 15. Please look at the photograph now shown to
you and state whether or not it represents any passen-
3151 ger car known to you to have been used upon the West-
ern R. R., now known as the Boston & Albany R. R.

A. In its external appearance, that is like the three
cars I have testified about. They all had the same
build and appearance externally. I was familiar with
the car body represented by this photograph when it
stood over in West Springfield, and know that it was
one of the three cars I have testified about. I was al-
ways of the impression that it was not the compart-
ment car. I always had it in my mind that it was one
of the dumpys, as we called them, or seat cars, and not
3152 the compartment car, which it was always my impres-
sion, and is now my impression, was longer than the
other two.

Photograph referred to filed in evidence
on behalf of the defendants and the same

is marked Defendants' Exhibit Springfield Car Photograph. Thomson H. Palmer, Special Examiner. 3153

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 16. When you brought in this board and lay down upon it when placed crosswise of the seats of the car, was the car in motion or standing still?

A. The car was standing still on the switch, waiting for our other train.

X-Q. 17. Were there any water closets or stoves in the car, and if so, where?

A. I don't remember of any stove in the car. There was no water closet. It seems to me, now that you have asked about a stove, as I think of it, that the two middle seats on one side of the car were taken out and a stove put in, in winter—an old cylinder stove, burning wood. 3154

X-Q. 18. What was the greatest distance that this car ever ran?

A. At the time I knew it it ran between Springfield and Washington, 40 miles and back.

X-Q. 19. Those two cars with the similar external appearance of the compartment car, as you state, but without partitions; are you quite confident that those cars had reversible seats, and if so, how did they reverse? 3155

A. Their backs were reversible. I think they were about six inches wide, cushioned with hair-cloth on both sides and having at each end a flat iron bar that extended down to the floor where it was pivoted so that the back could swing in both directions. I think this bar swung on the inside of the seat arm.

X-Q. 20. That compartment car that you have described was nothing more than an English compartment car, except that you entered the compartments from an aisle in the center of the car instead of a door from the outside, was it? 3156

A. As far as the English goes, I can't say.

RE-DIRECT EXAMINATION.

3157 R-D-Q. 21. Did you not carry these supporting boards, which you used to rest the cushion on in making your bed, all the time with you in the cars.

A. Pretty much all the time.

A. J. CHAPIN.

Attest :

THOMSON H. PALMER,
Special Examiner,

3158

(Recess.)

CHARLES P. NICHOLS, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows :

Q. 1. State your name, age, residence and occupation ?

3159 A. Charles P. Nichols ; age, 59 ; residence, Springfield, Mass., and occupation agent of Merchants' Despatch Transportation Co.

Q. 2. Were you ever connected with the Western R. R. Co., now known as the Boston & Albany R. R. Co.; if so, from when to when ?

A. I was. I commenced, I think, about 1845, and continued until about 1852 or '53.

Q. 3. Did you ever know of the Western R. R. Co. having in use upon its road a compartment passenger car ?

A. Yes, sir ; I rode in the car before I was employed by that R. R., and I rode in it a great many times.

3160 Q. 4. Please describe the internal arrangement of this car ?

A. The car was about twenty feet long, and inside there was three compartments on each side of a central passageway, which passageway ran from end to end of the car. These compartments were formed by two ver-

tical partitions on a side running from the floor to roof. These partitions extended from the passageway to the side of the car. 3161

Q. 5. How were the seats arranged?

A. The seats were stationary, run crosswise, and were against each partition and the ends of the car, so that the passengers in each compartment sat facing each other. The ends of the seats at the aisle were vertical boards or end pieces that came up high enough to make an arm, and had cap-pieces or arm-rests.

Q. 6. Did the seats have cushions?

A. Yes, sir; loose, flexible cushions, like an old-fashioned stage-coach, made of drab cloth. That is, the backs of the seats were tufted fast against the partitions and against the ends of the car; I mean up as high as the head would come while sitting upon the seat. 3162

Q. 7. Please look at the model I now show you, marked Defendants' Exhibit Springfield Car, and state whether you ever saw a car constructed like this model, and where?

A. This is like the car I have been testifying about, so far as it illustrates the car.

Q. 8. What was the distance between these partitions in the car?

A. I should say about six feet; a little less, maybe, than six feet, but not much. 3163

Q. 9. Please look at the photograph marked Defendants' Exhibit Springfield Car Photograph, and say whether you ever saw passenger cars like that which it represents?

A. It is a representation of the passenger cars used by the Western R. R. at the time I was in its employ, as stated.

CROSS-EXAMINATION BY MR. OFFIELD.

3164

X-Q. 10. Is it your recollection that that compartment car, now that your attention is called to it, was exactly 18 feet in length, outside measure?

A. I can't tell you the exact length of it.

3165 X-Q. 11. Will you testify that compartment car was over eighteen feet in length, outside measurement?

A. To the best of my knowledge and belief I should say that it was.

X-Q. 12. That may be your impression to-day, but have you any such recollection of the outside length of that compartment car that you can swear that it exceeded 18 feet in length?

3166 A. As I said before, I won't swear positive as to the exact length of the car, because I never measured one; but my impression has always been, and is now, that it was about 20 feet long; I should say not over 20 feet, at the most.

X-Q. 13. Was it not your recollection at one time, Major, and did you not so state, that the compartments in that old car were simply fitted up as an old-fashioned stage-coach, and that the distance between the padded backs you did not think exceeded four and a half feet?

A. I don't recollect that I ever did.

X-Q. 14. When was the first sleeping car of which you have any knowledge run on any R. R. in the United States?

3167 Objected to as incompetent, irrelevant and immaterial.

A. I don't believe I can tell you the year of the first sleeping car I seen. My impression would be, I should think, 1856. I may be mistaken about that. It was at Buffalo, and it was a Woodruff car.

X-Q. 15. Were you subpoenaed to testify in this case, or did you come voluntarily?

A. I was not subpoenaed; I came at the request of the counsel here.

3168 C. P. NICHOLS

Attest:

THOMSON H. PALMER.

Special Examiner.

Adjourned to to-morrow, March 17,
1882, at 10½ A. M.

SPRINGFIELD, MASS., } 3169
March 17, 1882. }

Met pursuant to adjournment.

Counsel appearing as before.

JOHN MULLIGAN, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows:

Q 1. State your name, age, residence and occupation. 3170

A. John Mulligan; age, 62; residence, Springfield, Mass., and I am superintendent of the Connecticut, River R. R.

Q 2. Were you ever employed by the Western R. R. now known as the Boston & Albany R. R., and if yea when and in what capacity?

A. I was; I commenced in November, '42, and continued to work for them until April 1, '52, as locomotive engineer,

Q 3. During your connection with that R. R. did it have in use a passenger car divided into compartments for the accommodation of passengers? 3171

A. Yes, sir; it was used for several years after 1842.

Q 4. Were you familiar with its internal construction, and if so, please describe it?

A. The inside of the car was finished a good deal like a stage coach. There was a passageway through the center of the car from end to end, with three compartments on each side of this passageway. These compartments were formed by two vertical partitions on each side that went from the floor to the roof, and from the aisle of the car to the side of the car. Each compartment had two seats in it, and these seats were against the partitions or ends of the car, so that the seats faced each other, and at their aisle ends these seats had arms. 3172

Q. 5. Were the seats provided with cushions, and were they fast or loose?

3173

A. They had loose cushions that were removable from the seats. The seats were made in regular stage-coach fashion—that is, they had loose, flexible cushions and their backs were made by stuffed or padded cushions, fast against the partitions and ends of the car and coming up quite high.

Q. 6. How long should you say this car was?

A. My recollection of it is that it was about 18 feet. I can't say whether it was a foot more or a foot less.

Q. 7. How much distance was there between the partition—that is, how long was each compartment?

3174

A. It seems to me it must have been five feet certain somewhere from five to six feet.

Q. 8. Please look at the model now shown to you, marked Def't's Ex. Springfield Car, and state whether you ever saw a car constructed like it and where?

A. The structure of this model is substantially that of the compartment car I have been testifying about.

Q. 9. Please look at the photograph I now show you, marked Def'ts' Ex. Springfield Car Photograph, and state whether it represents any car that you have ever seen?

3175

A. It represents the outside of the compartment car I have been testifying about—that is, the compartment car was like it in its exterior, as were two other passenger cars that ran on the road at the same time, but which were not provided with compartments.

CROSS-EXAMINATION BY MR. OFFIELD:

X-Q. 11. Were you subpoenaed to give this deposition, or did you do so voluntarily?

3176

A. I was not subpoenaed, I came at the request of Mr. Munson.

X-Q. 12. When was the first sleeping car in which passengers could sleep in at night in beds and have these beds transformed into seats in the day time, which you ever saw in use upon any R. R.?

NEW YORK, March 21st, 1882.

3181

Met pursuant to adjournment.

Counsel appearing as before.

JAMES B. GREGG, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows :

Q. 1. State your name, age, residence and occupation ?

3182 A. James B. Gregg ; age, 67 ; residence, Binghamton, New York ; manufacturer of boots and shoes.

Q. 2. Were you ever in the employ of the New York & Erie R R., now known as the New York, Lake Erie & Western R.R., and if so, in what capacity and from when to when ?

A. I was. I commenced service there in 1840, November, as foreman in the Piermont shops, the machinist department, and remained in that capacity until November, 1851, with the exception of eleven months absence, from which I returned to the same position.

3183 Q. 3. During any portion of this period of time did you know of that road having in use upon it any cars provided with seats which were capable of being made into sleeping berths ?

A. Yes, sir.

Q. 4. Did those cars have any general designation by which they were known ?

A. They were usually termed the diamond cars, to designate them from other cars.

Q. 5. How many of them were there ?

A. There were two.

3184 Q. 6. Were you familiar with the structure and operation of the seats and berths of those cars and how came you to familiarize yourself with them ?

A. I was familiar with them, because the position that I occupied there made it necessary that I should know about them, as it was my duty to look after the

Objected to as incompetent, irrelevant
immaterial.

3177

A. I can't fix the exact time, but about 1854 I went to Chicago and went into the Michigan Central car shops and they were transferring a car from a day car to a sleeping car.

X-Q. 13. That was the Woodruff car, was it not, and it was in the year 1857?

A. I can't say whether it was a Woodruff car or not. It was earlier than '59. I was in Chicago in '54 and '59, but I can't fix the date that I saw that car.

J. MULLIGAN.

Attest:

3178

THOMSON H. PALMER,
Special Examiner.

Adjourned to to-morrow, March 18th,
1882, at 10 o'clock A. M., at Worcester,
Mass

WORCESTER, MASS., }
March 18, 1882. }

3179

Met pursuant to adjournment.

Counsel appearing as before.

Adjourned to Monday, March 20th,
1882, at 10 o'clock, A. M., at New York
City, N. Y.

NEW YORK, March 20th, 1882.

Met pursuant to adjournment.

3180

Counsel appearing as before.

Adjourned to to-morrow, March 21st,
1882, at 10 o'clock, A.M.

rolling stock of the road as foreman.

Q 7. Was not your attention especially called to the sleeping arrangements within these cars when the cars first came upon the road? 3185

A. Yes, sir; I think, if my memory serves me properly, that Mr. John Brandt, then Superintendent of motive power, and Mr. H. C. Seymour, then Superintendent of the road, first called my attention to the structure of the sleeping arrangements in these cars, one or the other of these gentlemen. I think Mr. Brandt first explained the arrangement of the seats for sleeping, to me.

Q. 8. Did you examine the structure and operation of the combined seats and berths in those cars on this and other occasions while you were connected with the road? 3186

A. Yes, sir.

Q. 9. What caused these cars to be called diamond cars, if you know?

A. The peculiar construction of the side framework of the cars, which caused the rectangular window frames to stand so as to form diamonds.

Q. 10. Please describe the arrangement of the seats within these cars? 3187

A. The seats were constructed so as to be located back to back, two seats fronting each other. The cushions of those seats were made so they could be moved, that is, they were not transfixed to their position as seats are now. So in like manner the back cushions of the seats were movable. The seat cushions and the back cushions in their proper places formed an ordinary day sit up car, each two seats facing each other. To transform these seats into night berths, the side of that car; instead of having an ordinary truss, had a heavy timber running longitudinally along the side of the car and projecting about two inches, or possibly more, forming a ledge that came up just under the seat frame, level with the seat frame. Now when the seat cushions were moved out towards each other between the seats, one end rested on the projecting edge 3188

3189 of this plank truss (which I before called a heavy timber). The other end was provided with a movable bar that was drawn out from under the inner ends of the seats and extended across the opening between the seats and run into a pocket in the opposite seat, from which it was drawn, forming a bearing for the aisle ends of the seat cushions. The back cushions being movable were then laid down and rested in the position that the seat cushions formerly occupied, thus forming a flat or continuous surface from center to center of the seat back frames.

3190 Q. 11 How long was that flat or continuous surface?

A. I think, if my memory serves me, it was about six feet; it might have been a few inches over.

Q. 12. Did these cushions, when laid down flat, as you have described, form a couch or berth to lie down upon?

A. Yes, sir.

Q. 13. Could a person lying down upon one of those couches or berths thrust his feet or hands right into the next adjacent couch?

A. No, sir.

3191 Q. 14. Why not?

A. There was a partition separating the berths from each other. The partition was a vertical stationary partition between the two seats as they came back to back?

3192 Q. 15. I understand from your description that in making the bed or couch the seat cushions were slid forward or towards the center over the foot space between two facing seats where they were supported by the plank truss at one end and the sliding bar at the other and the back cushions were dropped down into the places from which the seat cushions were moved, and that in making them into seats each seat and back cushion was placed in the seat frame at about a slightly obtuse angle and the bar slid out of the way, is that correct?

A. Yes, sir; that is correct.

Q. 16. Were these seats longitudinal or transverse of the car, and was there any aisle?

A. They were transverse of the car and an aisle in the center with seats on either side. 3193

Q. 17. How many sets of facing seats which would make berths was there on each side of the car?

A. I think there was about six to eight sets or sections.

Q. 18. Were these back and seat cushions stiff cushions, or were they flexible, like a pillow?

A. They were made very much after the style and manner of cushions of the present day and were not intended to be rolled up. They had a board bottom to make them stiff and hold them to their places. 3194

Q. 19. Did these cars remain in use upon the road a number of years?

A. Yes, sir.

Q. 20. Have you ever seen a drawing, model or any other illustration or representation of those cars since you saw the cars themselves many years ago?

A. No, sir. I have not.

Q. 21. I now show you a model marked Defendants' Exhibit Stephenson Car, and ask you to examine the same and state whether or not you ever saw a passenger car the seats of which were constructed and operating like the said model, and where? 3195

A. It is a perfect model of what we called the old diamond cars used on the N. Y. & Erie R. R. as I have testified. I would have known it if I had seen it on the other side of the Atlantic. This model shows one side of the car and three sections, while the cars themselves had six or eight.

Q. 22. Do you mean that the seats and seat cushions and bars in the old cars themselves were constructed and operated like they do in this model? 3196

Objected to as leading.

A. Yes, sir.

Q. 23. During what years were cars with the sleeping

arrangements like this model used upon the N. Y. & Erie R. R.

- 3197 A. I cannot be positive about the time they came on the R R., but I think about 1844; perhaps the early part of that year.

CROSS-EXAMINATION BY MR. OFFIELD.

X-Q. 24. I call your attention to the fact that these partitions in the model are numbered 1, 2, 3, 4, 5, 6. Please state whether these partitions were so numbered in the original car.

- 3198 A. I do not remember whether the partitions were numbered or not.

X-Q. 25. Then you have no recollection as to the condition of the partitions between the seats in that old car?

A. I don't understand why the word "condition" is put in there with reference to the numbers. I have no recollection of the numbers.

X-Q. 26. And you can not testify whether the numbers were on the original car or not, as shown in the model?

- 3199 A. I do not recollect.

X-Q. 27. Then when you swore that the model was a perfect model of the old diamond car you didn't mean that the partitions as numbered in the model were numbered in the original car?

A. I meant that it was a perfect model of the construction; the numbers were simply incidental to its use, which numbers I do not remember to have been there.

- 3200 X-Q. 28. You recollect distinctly, do you not, that the windows in the ends of those diamond cars were square, as shown in this model?

A. Yes, sir.

X-Q. 29. And you swear to that just as positively as you do the construction of the windows in any other part of the car?

A. To the best of my recollection the windows in the ends of the car were square.

X-Q. 30. There were windows of some kind in the ends of the car you will swear positively, won't you? 3201

A. To the best of my recollection there were.

X-Q. 31. And you are just as confident that there were windows in the ends of those old diamond cars as you are to the construction of any other parts of the car, as sworn to by you?

A. I will simply answer as I did before. To the best of my recollection there were.

X-Q. 32. And it is simply a question of recollection, without any positive knowledge, is it not?

A. To the best of my recollection there were windows there. 3202

X-Q. 33. If some reliable person should get upon the stand and testify that there were no windows of any description in the ends of those two diamond cars you would believe him, would you not?

A. I hardly think so; I would have doubt of his accuracy of recollection.

X-Q. 34. There were three of these diamond windows, were there not, between the backs of the seats in those old diamond cars as shown in the model?

3203

A. That is my recollection of them.

X-Q. 35. And you are just as positive of that fact as you are of the construction of any other part of the car?

A. That is my recollection of the construction.

X-Q. 36. All that you have attempted to testify concerning these old cars in this deposition has simply been to the best of your recollection, has it not?

A. I have testified to the construction of the cars from my remembrance of the cars when they were on the road—seeing them.

3204

X-Q. 37. What year was it that Mr. Brandt or Seymour explained to you how these loose cushions in these two diamond cars could be twisted around so that a man could lie down on them as you have described?

3205 Objected to as misleading, for the reason that the witness has not said that the cushions were twisted around, but that they were moved forward towards the center to form the couch.

A. I think I did not swear to the fact that they were twisted, but if you will put the question in the form that I stated the fact, I will answer it.

3206 X-Q. 38 I see that you have followed the suggestion of counsel. Will you please now state what year it was that one of those two gentlemen explained to you how a man could fix those cushions up so he could lie down on them as you have described, if you prefer that manner of expression?

A. I think I testified to the best of my recollection the cars were brought onto the road in '44, and it was immediately after the cars came onto the road that I was shown the modus operandi of transforming the ordinary day seats into a sleeping couch as I have described.

X-Q. 39. How many cushions were moved to instruct you as to this modus operandi, at that time?

3207 A. Two sets of cushions or one section, so-called, which, of course, showed the arrangement of the whole car alike.

X-Q. 40. And you have given this deposition from your recollection which you got from seeing those four cushions arranged between the seat backs, have you, at that time so far as the arrangement of the cushions was concerned, so that a man might lie down on them?

3208 A. At that time and at other times also, seeing them placed in position so that persons could lie down on them, and from general examination of the structure of the car with reference to that portion of the structure of the car.

X-Q. 41. What other examination did you ever make as to the movable seat cushions of the diamond cars, except the one you have just mentioned, and state who was present?

A. These cars were a great curiosity at that day on the road, simply from the fact that up to that date there had been no attempt at sleeping cars and coaches on that road, and hence it was that not only among ourselves, the employees of the road, but when other railroad men came there it was a common thing to show them this new novelty of a sleeping coach car. 3209

X-Q. 42. And it was understood, was it not, at that time, amongst the employees of the Erie Road, that those two diamond cars were sleeping coach cars?

A. No, sir; they were not understood to be exclusively sleeping coach cars, but cars that could be used as day cars and could be transformed into a sleeping coach at night if need be, as a convenience, and hence the novelty I have spoken of and testified about. 3210

X-Q. 43. Both Mr. Brandt and Seymour mentioned by you are dead, are they not?

A. Yes, sir.

X-Q. 44. Can you mention the names of any persons now living who were ever with you when the seat and back cushions of those two old passenger cars were moved around in any kind of a shape so that a man could lie down on them?

A. I can't call to memory, but I think one or two persons that are now living; one of them Alexander Main, and Archibald Parish. 3211

X-Q. 45. Do you know what became of either of those two diamond cars after 1851?

A. I do not remember what use they were put to after 1851.

X-Q. 46. At the time you saw those loose cushions placed in a position so that a man could lie down on them, when Mr. Brandt and Seymour were with you, the car was standing still at Piermont, was it not?

A. Yes, sir.

X-Q. 47. The seat cushions of those two diamond cars were of the same construction and covering as shown in the model, were they not? 3212

A. To the best of my recollection, sir, they were. I am not positive about the covering.

3213 X-Q. 48. The cushions and backs of those cars consisted of a solid board, as shown in this model, did they not?

A. My impression is that it did, though I wouldn't swear positively to that; for both the seat and back cushions were solid board, cut out, making a skeleton; making it lighter.

X-Q. 49. What eleven months was it that you were away between '40 and '51?

A. It was between '48 and '49.

3214 X-Q. 50. Were you subpoenaed to come here and give this deposition, or did you come voluntarily at the request of some person interested in the defense of this case?

A. I was not subpoenaed, I came voluntarily at the request of Mr. Munson.

RE-DIRECT-EXAMINATION BY MR. MUNSON :

R-D-Q. 51. Was there any stuffing in the cushions to make them soft?

A. The cushions were made with stuffing to make them soft.

3215

JAMES B. GREGG.

Attest :

THOMSON H. PALMER,
Special Examiner.

Adjourned to to-morrow, March 22,
1882, at 11 o'clock A. M.

NEW YORK, March 22, 1882.

3216

Met pursuant to adjournment.

Counsel appearing as before.

HENRY L. BROWN, a witness produced by and on be-

half of the defendants, having been duly sworn, testified as follows :

Q. 1. State your name, age, residence and occupation ? 3217

A. Henry L. Brown ; age, 66 ; residence, New Lebanon, N. Y., and occupation gentleman.

Q. 2. Have you a trade or profession ?

A. I am a mechanical engineer.

Q. 3. Were you ever employed by the New York & Erie R. R., now the N. Y., Lake Erie & Western R. R.; and if so, in what capacity, and when ?

A. I was, as master mechanic, commencing July 1st, 1858, and continued until September, 1873.

Q. 4. Did you, while so connected with that road, know of its building and using drovers' cars having sleeping berths in them ? 3218

A. I did ; in the fall of 1858 there were two drovers' cars built under my superintendence at the Piermont shops.

Q. 5. Please describe the construction of those cars ?

A. The bodies of the cars were 20 to 22 feet long, and had sleeping berths on each side of a central aisle. These berths or bunks were three lengthwise and two high—that is, twelve in number. The lower bunks or berths were a box seat with hinged covers at the outer edge. Each box was separated from the next adjacent box by a $\frac{7}{8}$ -inch partition which formed the end of the box. On the lids there was a loose cushion, made of enameled cloth. The upper bunks or berths were made of a light frame, with sides that made a box about two inches deep, with a canvass bottom. This was supplied with a loose cushion. The frame or box was hinged to the side of the car just above the windows, the joints of the hinges being at the top of the wall side of the box. These berths turned up towards the side of the car at an angle of probably 70° to 80°. That was for day use, and they were secured in this turned-up position by bolts shooting behind stops fastened to the car lines. 3219

Q. 6. Did the front edge of these berths rest against the 3220

carlines when they were fastened up in the day time?

3221 A. Yes, sir.

Q. 7. Was there an upper berth over each box or berth?

A. Yes, sir.

Q. 8. How were the upper berths fixed to sleep on?

A. They were lowered down to a horizontal position, and secured by hooks extending from the roof of the car hooking into staples in the front side of the berth frame. There were two hooks for each berth, one near each end.

3222 Q. 9. What became of those hooks in the day time when the upper berth was turned up at an angle against the carlines?

A. They were raised up and secured parallel with the roof of the car by little stirrups that they hooked into.

Q. 10. Did these drovers' cars go into use on the road for the sleeping accommodation of drovers?

A. They did, sir.

3223 Q. 11. Please look at the model marked Defendants, Exhibit Erie Car, and state whether you ever saw a car constructed and operating like it, and where?

A. I have. It is a very correct model of the cars I have described in my testimony—that is, of one section of those cars.

Q. 12. Where did you get your idea of hinging the upper berths in these cars?

A. I got it from a car that I rode in on a trip to Louisiana, on the Cumberland Valley R. R., which had hinged upper berths.

CROSS-EXAMINATION BY MR. OFFIELD.

3224

X-Q. 13. Were there any partitions of any kind extending from the top of the lower bench or seat towards the ceiling of the car between any of these bunks in those two cars?

A. There was not, sir.

X-Q. 14. How long were you familiar with the Erie R.R. before you were its master mechanic in July, 1858?

A. I knew but little of the Erie R.R. previous to that. 3225

X-Q. 15. Were you subpoenaed to come here and give this deposition?

A. I was not, sir.

X-Q. 16. You came voluntarily, did you?

A. Mr. Munson came up to see me, and requested me to come, and I reluctantly acceded to his request.

HENRY L. BROWN.

Attest:

THOMSON H. PALMER,
Special Examiner.

3226

It is hereby stipulated and agreed by counsel for complainants in this suit that, as now understood, the complainants will take no testimony in rebuttal, or in explanation of the foregoing depositions of witnesses, Calvin A. Smith and Henry L. Brown, relating to the car illustrated by the "Defendants' Exhibit Erie Car," but it is stipulated by counsel that if hereafter complainants desire to rebut said evidence, as to said car, they may adduce testimony in rebuttal of said evidence, and that upon notice of such desire, defendants shall have, before such rebutting evidence is taken, a reasonable time within which to substantiate and confirm the evidence of said witnesses by the production of other witnesses, and the taking and filing of their testimony herein in like manner and effect as if the same had been taken and filed within the time for adducing proofs on behalf of defendants; and that thereafter complainants shall in like manner have reasonable time within which to take testimony in rebuttal of the evidence respecting said car. 3227

OFFIELD & TOWLE,
Complainants' Solicitors. 3228

MUNSON & PHILIPP,
Defendants' Solicitors.

Adjourned to to-morrow, March 23d,
1882, at 10 o'clock, A.M.



NEW YORK, March 23d, 1882. 3233

Met pursuant to adjournment.

Present—For complainants, C. K. OFFIELD, ESQ.;
for defendants, M. B. PHILIPP, ESQ.

Counsel for defendants offers and files in evidence on their behalf a certified copy of U. S. Letters Patent granted to Theodore T. Woodruff for Improvement in Railroad Car Seats and Couches, dated December 2, 1856, No. 16,159, and the same is marked "Defendants' Exhibit, Original Woodruff 1856 Patent. T. H. Palmer, Special Exr." 3234

Also, certified copy of U. S. Letters Patent granted to Henry B. Myer for Mode of Converting the Backs of Car Seats into Beds or Lounges, dated September 19, 1854, No. 11,699, and the same is marked "Defendants' Exhibit Myer 1854 Patent. T. H. Palmer, Special Exr."

Also, a certified copy of English Letters Patent granted to Narcisse Leroy for Improvements in the Construction of Railway Carriages, dated October 9, 1855, sealed January 18, 1856, and numbered 2,259, and the same is marked "Defendants' Exhibit Leroy, 1855, English Patent. T. H. Palmer, Special Exr." 3235

Also, a certified copy from the files of the U. S. Patent Office, of the file, wrapper and contents of the Letters Patent granted Z. Cobb, July 6, 1858, No. 20,777, for Improvement in Railroad Car Seats and Berths, and the same is marked "Defendants' Exhibit Cobb File, Wrapper and Contents. T. H. Palmer, Special Exr." 3236

Also, certified copy from the files and records of the U. S. Patent Office of all papers (except patents issued) in the matter of the application of Theodore T. Woodruff for Patent for Improvement in Seats and Couches for Railroad Cars, patented January 24, 1860,

- 3237 No. 26,942, and the same is marked "Defendant's" Exhibit, File, Wrapper and Contents; Woodruff, 1860 Patent. T. H. Palmer, Special Exr."

Also, certified copy of U. S. Letters Patent, granted to Theodore T. Woodruff for Improvement in Seats and Couches for Railroad Cars, dated January 24, 1860, and numbered 26,942, and the same is marked "Defendants' Exhibit Woodruff, 1860 Patent. T. H. Palmer, Special Exr."

3238

Also, certified copy from the files of the U. S. Patent Office of the file, wrapper, and Examiner's Report in the matter of the application for the extension of Letters Patent granted Zenas Cobb July 6, 1858, No. 20,777, for Improvement in Railroad Car Seats and Berths, and the same is marked "Defendants' Exhibit, Examiner's Report Cobb Extension. T. H. Palmer, Special Exr."

3239

Also, certified copy from the files of the U. S. Patent Office of the Decision of the Commissioner in the matter of the application for the extension of the Letters Patent granted Theodore T. Woodruff May 31, 1859, No. 24,257, for Improvement in Seats and Couches for Railroad Cars, and the same is marked "Defendants' Exhibit, Commissioner's Decision, Woodruff, 1859 Patent. T. H. Palmer, Special Exr."

3240

Also, a certified copy of U. S. Letters Patent, granted to Nicholas McGraw, for Improvement in Sofa Bedstead, dated December 10, 1838, No. 1,030, and the same is marked "Defendants' Exhibit McGraw, 1838 Patent. T. H. Palmer, Special Exr."

Also, a certified copy of U. S. Letters Patent granted to John C. Emory, for Improvement in Sofa Bedsteads, dated June 20, 1848, No. 5,641, and the same is marked "Defendants' Exhibit Emery, 1848 Patent. T. H. Palmer, Special Exr."

Also, a certified copy of U. S. Letters Patent granted to Eli Wheeler, for Improvement in Railroad Car Seats, dated September 20, 1859, No. 25,499, and the same is marked "Defendants' Exhibit original Wheeler 1859 Patent. T. H. Palmer, Special Exr." 3241

Also, a certified copy of U. S. Letters Patent granted to Theodore T. Woodruff, for Improvement in Railroad Car Seats and Coaches, dated December 2, 1856, No. 16,160, and the same is marked "Defendants' Exhibit Woodruff, 1856 Patent, No 16,160. T. H. Palmer, Special Exr." 3242

Also, a certified copy of U. S. Letters Patent granted to A. G. Warren, for Improvement in Sofa Bedsteads, dated May 28, 1850, No. 7,404, and the same is marked "Defendants' Exhibit Warren, 1850 Patent. T. H. Palmer, Special Exr."

Also, a certified copy of U. S. Letters Patent granted to Abel B. Buell, for Improvement in Railroad Car Seats, dated May 11, 1852, No. 8,935, and the same is marked "Defendants' Exhibit Buell, 1852 Patent. T. H. Palmer, Special Exr." 3243

Also, a certified copy of U. S. Letters Patent granted to J. B. Creighton, for Improvement in Couches for Railroad Cars, dated September 28, 1858, No. 21,600, and the same is marked "Defendants' Exhibit Creighton, 1858 Patent. T. H. Palmer, Special Exr." 3244

Also, a certified copy of U. S. Letters Patent granted to George L. Dulaney and Solomon K. Moore, for Improvement in Railroad Car Seats, dated December 28, 1858, No. 22,471, and the same is marked "Defendants' Exhibit Dulaney and Moore, 1858 Patent. T. H. Palmer, Special Exr."

Also, a certified copy of U. S. Letters Patent granted to Thomas E. McNeill, for Improvement in Seats and Couches for Railway

3245 Cars, dated May 31, 1859, No. 24,225, and the same is marked "Defendants' Exhibit McNeill, 1859 Patent, No. 24,225. T. H. Palmer, Special Exr."

Also, a certified copy of U. S. Letters Patent granted to Rudolph Dirks, for Improvements in Seats for Sleeping Cars, dated August 9, 1859, No. 24,998, and the same is marked "Defendants' Exhibit Dirks, 1859 Patent. T. H. Palmer, Special Exr."

3246 Also, a certified copy of U. S. Letters Patent granted to Thomas E. McNeill, for Improvement in Seats and Couches for Sleeping Cars, dated May 24, 1859, No. 24,136, and the same is marked "Defendants' Exhibit McNeill, 1859 Patent, No. 24,136. T. H. Palmer, Special Exr."

3247 Also, a certified copy of U. S. Letters Patent granted to Edward C. Knight, for Improvement in Arranging Couches in Railroad Cars, dated June 28, 1859, No. 24,563, and the same is marked "Defendants' Exhibit Knight, 1859 Patent. T. H. Palmer, Special Exr."

3248 Also, a certified copy of U. S. Letters Patent granted to Theodore Luce and John H. Morrison, for Improvement in Railroad Sleeping Cars, dated January 4, 1859, No. 22,506, and the same is marked "Defendants' Exhibit Luce and Morrison, 1859 Patent. T. H. Palmer, Special Exr."

Adjourned to to-morrow, March 24th, 1882, at 10 o'clock A. M.

NEW YORK, March 24th, 1882.

Met pursuant to adjournment. Counsel appearing as before.

Counsel for defendants offers and files in evidence on their behalf a certified copy of

the U. S. Letters Patent granted to Field and Pullman for Improvement in Sleeping Cars, dated September 19, 1865, No. 49,992, and the same is marked "Defendants' Exhibit, original Field and Pullman 1865 Patent. T. H. Palmer, Special Exr." 3249

Also, a certified copy from the files of the United States Patent Office of the File, Wrapper and Contents in the matter of the Reissued Letters Patent of the U. S., granted to George M. Pullman for Improvement in Sleeping Cars, dated February 11, 1868, No. 2,862, and the same is marked "Defendants' Exhibit File, Wrapper and Contents, Pullman, 1868 Reissue. T. H. Palmer, Special Exr." 3250

Also, a certified copy of the Reissued Letters Patent of the United States granted to George M. Pullman for Improvement in Sleeping Cars, dated February 11, 1868, No. 2,862, and the same is marked "Defendants' Exhibit Pullman, 1868 Reissue. T. H. Palmer, Special Exr." 3251

Also, a certified copy of English Letters Patent granted to George Hazeldine for Improvement in Wheel Carriages and in the wheels thereof, dated March 8, 1855, sealed August 31, 1855, and numbered 516; and the same is marked "Defendants' Exhibit, Hazeldine, 1855, English Patent. T. H. Palmer, Special Exr." 3252.

Also, a certified copy of the U. S. Letters Patent granted to James S. McCurdy for Improvement in Wardrobe or Bureau Bedsteads, dated April 14, 1857, No. 17,047, and the same is marked "Defendants' Exhibit McCurdy, 1857 Patent. T. H. Palmer, Special Exr."

Also, a certified copy of the U. S. Letters Patent granted to C. M. Mann for Improvement in R. R. Car Seats, dated August 31,

- 3253 1858, No. 21,352, and the same is marked "Defendants' Exhibit Mann, 1858 Patent. T. H. Palmer, Special Exr."

Also, a certified copy of the U. S. Letters Patent granted Plymon B. Green for Improvement in Seats and Sleeping Couches for Railroad Cars, dated December 21, 1858, No. 22,364, and the same is marked "Defendants' Exhibit Green, 1858 Patent. T. H. Palmer, Special Exr."

- 3254 Also, a certified copy of the U. S. Letters Patent granted to Frederick C. Payne and Alfred Reid for Improved Wardrobe Beds, dated April 12, 1859, No. 23,604, and the same is marked "Defendants' Exhibit Payne & Reid, 1859 Patent. T. H. Palmer, Special Exr."

Also, a certified copy of the U. S. Letters Patent granted to William A. Brown, for Improvement in Couches for Railroad Cars, dated July 17, 1860, No. 29,137, and the same is marked "Defendants' Exhibit Brown, 1860 Patent. T. H. Palmer, Special Exr."

3255

Also, a certified copy of the U. S. Letters Patent granted to David Pennoyer, for Improvement in Car Seats and Couches, dated August 28, 1860, No. 29,813, and the same is marked "Defendants' Exhibit Pennoyer, 1860 Patent. T. H. Palmer, Special Exr."

3256

Also, a certified copy of the U. S. Letters Patent granted to Edward Burke and Abraham Sulger, for Improvements in Seats and Couches for Railroad Cars, dated October 23, 1860, No. 30,517, and the same is marked "Defendants' Exhibit Burke & Sulger, 1860 Patent. T. H. Palmer, Special Exr."

Also, a certified copy of the U. S. Letters Patent granted to J. H. Fisher for Improvement in Railroad Car Seats and Couches, dated October 23, 1860, No. 30,472, and the same is marked "Defendants' Exhibit Fisher, 1860 Patent. T. H. Palmer, Special Exr."

Also, a certified copy of the U. S. Letters Patent granted to Field & Pullman for Improvement in Sleeping Cars, dated April 5, 1864, No. 42,182, and the same is marked "Defendants' Exhibit Field & Pullman, 1864 Patent. T. H. Palmer, Special Exr." 3257

Also, page 369, Volume V., of a printed publication entitled, "Scientific American, a Weekly Journal of practical information in Art, Science, Mechanics, Chemistry and Manufactures," bearing the imprint, "New York, December 14, 1861," and the same is marked "Defendants' Exhibit Scientific American, 1861. T. H. Palmer, Special Exr." 3258

It is admitted by counsel for complainants that the said page of said printed publication was printed and published December 14, 1861, the imprint that it bears.

Also, a certified copy from the files of the U. S. Patent Office, of the affidavit of Henry Badger, in the matter of the application for the extension of the Letters Patent granted Eli Wheeler, September 20, 1859, No. 25,499, for Improvement in Railroad Car Seats, and the same is marked "Defendants' Exhibit Badger Affidavit, Wheeler Extension. T. H. Palmer, Special Exr." 3259

Also, a certified copy from the files of the United States Patent Office of the affidavit of Edward Goodman, filed August 27, 1873, *in re* application of Eli Wheeler for extension of Letters Patent No. 25,499, for Improvement in Railroad Car Seats, and the same is marked "Defendants' Exhibit Goodman Affidavit, Wheeler Extension. T. H. Palmer, Special Exr." 3260

Also, a certified copy of U. S. Letters Patent granted to Charles L. Harrington, for Improvement in Sleeping Cars for Railroads, dated August 3, 1858, No. 21,070, and the same is marked "Defendants' Exhibit Har-

3261 rington, 1858 Patent. T. H. Palmer, Special Exr."

Also, certified copy of U. S. Letters Patent granted to B. F. Manier, April 11, 1871, No. 113,539, and the same is marked "Defendants' Exhibit Manier, 1871 Patent. T. H. Palmer, Special Exr."

3262 Also, certified copy of U. S. Letters Patent, granted to W. B. Snow, dated May 17, 1870, No. 103,097, and the same is marked "Defendants' Exhibit Snow, 1870 Patent. T. H. Palmer, Special Exr."

Also, certified copy from the records of the Patent Office of an assignment from the Central Transportation Company to George M. Pullman, Trustee, recorded in Liber L 12, page 248, and the same is marked "Defendants' Exhibit Central Transportation Company's Assignment. T. H. Palmer, Special Exr."

3263 It is admitted by counsel for complainants that the Central Transportation Company, of Pennsylvania, owned each and all of the Letters Patent, reissues, licenses, etc., set forth in the instrument marked "Defendants' Exhibit Central Transportation Company's Assignment," at the date of said assignment, and that by such instrument George M. Pullman, one of the complainants, as trustee for the other complainant herein, acquired title to the aforesaid Letters Patent, reissues, licenses, etc.

3264 Defendants' counsel further offers and files in evidence on their behalf, certified copy from the records of the Patent Office, relating to the Field & Pullman patent of April 5, 1864, and the same is marked "Defendants' Exhibit Field Assignment. T. H. Palmer, Special Exr."

Also, certified copy of records of the Patent Office, relating to the Case patent of

June 22d, 1858, and the same is marked "De- 3265
fendants' Exhibit Case Assignment. T. H.
Palmer, Special Exr."

Also, certified copy from the records of the
Patent Office, relating to the J. B. Sutherland
patent of August 14, 1860, and the same is
marked "Defendants' Exhibit Sutherland As-
signment. T. H. Palmer, Special Exr."

Also, certified copy from the records of the
Patent Office, relating to the patent of H.
Ruttan, of January 15, 1851, and the same is 3266
marked "Defendants' Exhibit Ruttan As-
signment. T. H. Palmer, Special Exr."

Also, certified copies from the records of the
Patent Office, relating to the patent granted
to C. M. Mann, of August 31st, 1858, and the
same is marked "Defendants' Exhibit Mann
Assignment. T. H. Palmer, Special Exr."

Also, certified copy from the records of the
Patent Office, relating to the patent to A.
Longstreet, of April 27, 1869, and the same is 3267
marked "Defendants' Exhibit Longstreet As-
signment. T. H. Palmer, Special Exr."

Also, certified copy from the records of the
Patent Office, relating to the patent to Ben.
Field, of July 31, 1866, and the same is
marked "Defendants' Exhibit Field Assign-
ment, 1866 Patent. T. H. Palmer, Special
Exr."

Also, certified copy from the records of the
Patent Office, relating to the patent to B. F. 3268
Manier, of April 11, 1871, and the same is
marked "Defendants' Exhibit Manier As-
signment. T. H. Palmer, Special Exr."

Adjourned to to-morrow, March 25, 1882, at 10
o'clock, A. M.

3269

NEW YORK, March 25, 1882.

Met pursuant to adjournment, counsel appearing as before.

Adjourned to Monday, March 27, 1882, at 10 o'clock, A. M.

NEW YORK, March 27th, 1882.

Met pursuant to adjournment.

Counsel appearing as before.

3270

WILLIAM C. HICKS, a witness produced by and on behalf of the defendants, having been duly sworn, testified as follows :

Q. 1 State your name, age, residence and occupation ?

A. William C. Hicks ; age 52 ; residence Summit, New Jersey ; place of business, 19 Park Place, N. Y. City. I am a civil and mechanical engineer.

3271

Q. 2. What opportunities have you had to familiarize yourself with mechanical principles and devices what, opportunities to apply such principles in the examination of patented inventions, and what experience have you had in the study of drawings and specifications of inventions, and as an expert in patent causes, and what knowledge have you of the construction of railroad cars ?

3272

A. Immediately after being graduated at college in 1848, I went into the employ of the Ballardvale Locomotive Company as apprentice and assistant draughtsman. From that to the present time I have been constantly engaged in scientific and mechanical pursuits connected with the profession of civil and mechanical engineer.

I have had a practical experience and education as a civil engineer, and I have been the superintendent of several large manufactories. I am a practical draughtsman, and have since the year 1859 been very frequently called to act as expert in patent causes before the United States Courts, and also before the State Courts where matters involving mechanical and scientific subjects have been in contest.

I have made numerous examinations and comparisons between inventions patented or otherwise, in connection with suits upon a great variety of subjects, extending over a period of over twenty years. 3273

I have a very good knowledge of railroads, railroad equipments, locomotives and passenger cars, and am acquainted with the construction and operation and the manufacture of the same.

Q. 3. Have you read all the depositions of witnesses taken upon the part of the defendants herein, relating to a sleeping car that was used on the Richmond, Fredericksburg and Potomac Railroad, in the State of Virginia, and have you examined Defendants' Exhibit Richmond Car, referred to in those depositions, and if so, do you understand the construction and operation of the devices of said sleeping car and the devices as represented in the said exhibit? 3274

A. I have read a large number of said depositions and I am informed by defendants' counsel that those I have read include all there are on the subject. I have examined said Defendants' Exhibit Richmond Car, and I do understand the construction and operation of said car and of the exhibit referred to. For convenience I will hereafter call this sleeping car the Richmond Car. 3275

Q. 4. Have you read all the depositions of witnesses taken upon the part of the defendants herein relating to the sleeping cars that were used on the Petersburg R. R., sometimes called the Petersburg and Roanoke R. R., in the States of Virginia and North Carolina, and have you examined Defendants' Exhibit Petersburg Car referred to in those depositions, and if so, do you understand the construction and operation of the devices of said sleeping cars, and the devices as represented in the said exhibit? 3276

A. I have read a large number of said depositions and I am informed by defendants' counsel that those I have read include all there are on the subject. I have examined said Defendants' Exhibit Petersburg Car, and I do understand the construction and operation

3277 ation of the devices of said sleeping cars and the devices as represented in the said exhibit. For convenience I will hereafter call this car the Petersburg Car.

Q. 5. Have you read all the depositions of witnesses taken upon the part of the defendants herein relating to the sleeping cars that were used on the Cumberland Valley R. R., in the State of Pennsylvania, and have you examined Defendants' Exhibit Chambersburg Car, referred to in those depositions, and if so, do you understand the construction and operation of the devices of said sleeping cars and the devices as represented in the said exhibit?

A. I have read a large number of said depositions and I am informed by defendants' counsel that those I have read include all there are on the subject. I have examined said Defendants' Exhibit Chambersburg Car, and I do understand the construction and operation of the devices of said sleeping cars, and the devices as represented in the said exhibit. For convenience I will hereafter call this car the Chambersburg Car.

Q. 6. Have you read all the depositions of witnesses taken upon the part of the defendants herein relating to the sleeping cars that were used on the Toledo, Wabash & Western R. R. in the States of Ohio and Indiana, and have you examined Defendants' exhibit Toledo Car referred to in those depositions, and if so, do you understand the construction and operation of the devices of said sleeping cars and the devices as represented in the said exhibit?

A. I have read a large number of said depositions and I am informed by defendants' counsel that those I have read include all there are on the subject. I have examined said Defendants' exhibit Toledo Car and I do understand the construction and operation of the devices of said sleeping cars and the devices as represented in the said exhibit. For convenience, I will hereafter call these cars the Toledo Car.

Q. 7. Have you read all the depositions of witnesses taken upon the part of the defendants herein relating to the sleeping car that was used on the Toledo, Wabash & Western R. R. in the States of Ohio and Indiana, and have you examined Defendants' exhibit Fort Wayne Car Model referred to in those depositions, and if so, do you understand the construction and operation of the devices of said sleeping car and the devices as represented in the said exhibit? 3281

A. I have read several of said depositions, and I am informed by defendants' counsel that those I have read include all there are on the subject. I have examined said Defendants' exhibit Fort Wayne Car Model and I do understand the construction and operation of the devices of said sleeping car and the devices as represented in the said exhibit. For convenience, I will hereafter call this car the Fort Wayne Car. 3282

Q. 8. Have you read all the depositions of witnesses taken upon the part of the defendants herein relating to the sleeping-car that was used on the Chicago and Rock Island R. R., in the States of Illinois and Iowa, and have you examined Defendants' Exhibit Rock Island Car referred to in those depositions, and if so, do you understand the construction and operation of the devices of said sleeping-car, and the devices as represented in the said exhibit? 3283

A. I have read a number of said depositions, and I am informed by defendants' counsel that those I have read included all there are on the subject. I have examined said Defendants' Exhibit Rock Island Car and I do understand the construction and operation of the devices of said sleeping-car, and the the devices as represented in the said exhibit. For convenience, I will hereafter call this car the Rock Island Car. 3284

Q. 9. Have you read all the depositions of witnesses taken upon the part of the defendants herein relating to the cars which were used on the N. Y.

3285 & Erie R. R., in the State of New York, and have you examined Defendants' Exhibit Stephenson Car referred to in those depositions, and if so, do you understand the construction and operation of the devices of said cars, and the devices as represented in the said exhibit?

A. I have read a large number of said depositions, and I am informed by defendants' counsel that those I have read include all there are on the subject. I have examined said Defendants' Exhibit Stephen-
3286 son Car, and I do understand the construction and operation of the devices of said cars, and the devices as represented in the said exhibit. For convenience I will hereafter call these cars the Stephenson Car.

Q. 10. Have you read all the depositions of witnesses taken upon the part of the defendants herein relating to the passenger car that was used on the Western R. R. in the State of Massachusetts, and have you examined Defendants' Exhibit Spring-
3287 field Car referred to in those depositions, and if so, do you understand the construction and operation of said car and the devices as represented in the said exhibit?

A. I have read a number of said depositions, and I am informed by defendants' counsel that those I have read include all there are on the subject; I have examined said Defendants' Exhibit Springfield Car, and I do understand the construction and operation of said car, and the devices as represented in the
3288 said exhibit. For convenience I will hereafter call this car the Springfield Car.

Q. 11. Have you read all the depositions of witnesses taken upon the part of the defendants herein relating to the sleeping cars that were used on the New York & Erie R. R., in the States of New York and New Jersey, and have you examined Defendants' Exhibit Erie Car referred to in those depositions; and if so, do you understand the construction and operation of the devices of said sleeping cars and the devices as represented in the said exhibit?

A. I have read two of said depositions, and I am 3289 informed by defendants' counsel that those I have read include all there are on the subject. I have examined said Defendants' Exhibit Erie Car and I do understand the construction and operation of the devices of said sleeping cars, and the devices as represented in the said exhibit. For convenience I will hereafter call these cars the Erie Car.

Q. 12. After examining the drawing now shown you, please state what it represents, placing letters upon such parts as you may desire, to make your 3290 answer more clear?

A. I have examined the drawing referred to. It represents a perspective view of a part of the interior of what is called the Richmond Car, looking lengthwise of the central aisle.

It shows upon one side two lower berths open in condition for sleeping purposes, with two middle berths also open, and two upper berths in position for night use, making in all two complete sections, each section having three berths of the character 3291 represented in Defendants' Exhibit Richmond Car.

On the opposite side of said aisle are represented two sections containing three berths each exactly alike the berths upon the other side of the central aisle, closed for day use. Letter M represents the upper part of the partitions between the sections; letter *h* represents the lower portion of said partitions; letter A represents the hinged upper berths; letter C represents the inner supports for the hinged upper berths, when they are in a horizontal position; letter *e* represents the longitudinal central aisle of the car; letter *a* represents the floor of the car; letters J J represent removable head and foot boards, connected with the partitions *h*, *h*, for the purpose of separating the lower berths. 3292

Counsel for defendants offers and files in evidence, in their behalf, the drawing just referred to, and the same is marked Defendants' Exhibit Drawing Richmond Car. T. H. Palmer, Special Exr.

3293 Counsel for complainants objects to the introduction of the drawing referred to in evidence as incompetent, irrelevant and immaterial.

Q. 13. After examining the drawing now shown you, please state what it represents, placing letters upon such parts as you may desire, to make your answer more clear?

3294 A. I have examined the drawing referred to. It represents a perspective view of a part of the interior of what is called the Petersburg car, looking lengthwise of the central aisle. It shows upon one side of the central aisle of the car, six berths in position for night use, and upon the other side of the central aisle of the car the two upper berths in their closed position, as they would be when not in use for sleeping purposes, the two middle berths turned down to form the backs of the seats, and the two lower berths arranged for day use as seats for passengers. Letter M represents the partition across the car, which separates the gentlemen's apartment from the ladies' apartment; the ladies apartment not being shown, but the door leading to it is represented at the end of the central aisle in partition M. The upper berths are marked letter A, which are hinged to the sides of the car; the inner supports for the berths are marked C; letter *e* represents the longitudinal central aisle of the car, and letter *a* the floor of the car.

3296 Counsel for defendants offers and files in evidence in their behalf the drawing just referred to, and the same is marked Defendants' Exhibit, Drawing Petersburg Car No. 1, T. H. Palmer, Special Exr.

Counsel for complainants objects to the introduction of the drawing referred to in evidence as incompetent, irrelevant and immaterial.

Q. 14. After examining the drawing now shown you, please state what it represents, placing letters

upon such parts as you may desire, to make your answer more clear? 3297

A. I have examined the drawing referred to; it represents a perspective view of a part of the interior of what is called the Petersburg Car, looking lengthwise of the central aisle from the door in the partition between the gentlemen's apartment and ladies apartment, to the outside door of the car.

It represents one-half of the central aisle and the three berths upon one side of the same in position for day use with the partitions forming the ladies water-closet; it also shows in dotted lines the position of the berths for night use; A represents the upper berth hinged to the side of the car; letter C represents the catches or bolts for sustaining the berth A, in a horizontal position for night use, and the upper berth A in its angular day position when not in use for sleeping purposes; letter M represents the upper portion and letter *h* the lower portion of the cross partition of the ladies water-closet into which the bolts C enter at one end of the berth; the dotted partition marked dotted *h* represents the partition between the gentlemen and ladies apartments. 3298 3299

Counsel for defendants offers and files in evidence in their behalf the drawing just referred to, and the same is marked Defendants' Exhibit Drawing Petersburg Car No. 2. T. H. Palmer, Special Examiner.

Counsel for complainants objects to the introduction of the drawing referred to in evidence as incompetent, irrelevant and immaterial 3300

Q 15. After examining the drawing now shown you, please state what it represents, placing letters upon such parts as you may desire, to make your answer more clear?

A. I have examined the drawing referred to. It represents a perspective view of a part of the interior of what is called the Chambersburg Car, looking

3301 lengthwise of the central aisle from the position of the fixed transverse seats of the gentlemen's apartment towards the transverse partition between the gentlemen's and ladies' apartments, showing said partition at the end of the central aisle with a door in said partition.

This drawing represents two sections of berths on each side of the central aisle, each section containing three berths—a lower, middle and upper berth. On the right-hand side all these berths are shown in
3302 their position for night use with one partition between the sections, the top of which partition is marked M and the bottom *h*. On the opposite side of the central aisle the same corresponding parts are represented as they would be positioned for day use. The partition between the transverse seats and the section next to them is not shown but the partition between the gentlemen's and ladies' apartments is shown, forming the end of the second sections, one on each side of the aisle of the gentlemen's
3303 apartment. A, represents the upper berths hinged to the partitions near the sides of the car. Letter C shows the means for supporting the upper berths, which are cleats upon the partitions, and suspending straps mid-way of the length of the upper berths hooked to the inner edges of those upper berths at their lower ends, and attached to the roof of the car at their upper ends. B represents the hinges of the upper berths, by means of which they are connected to the partitions
3304 near the sides of the car, and around which they turn, as said upper berths are carried into their angular position towards the roof of the car, and vice versa.

Counsel for defendants offers and files in evidence in their behalf the drawing just referred to, and the same is marked "Defendants' Exhibit Drawing Chambersburg Car. T. H. Palmer, Special Exr."

Counsel for complainants objects to the introduction of the drawing referred to in evi-

dence as incompetent, irrelevant and immaterial. 3305

Adjourned till to-morrow, March 28th, 1882, at 9 o'clock, A. M.

NEW YORK, March 28, 1882.

Met pursuant to adjournment.

Counsel appearing as before.

WM. C. HICKS' EXAMINATION CONTINUED:

3306

Q. 16. After examining the drawing now shown you, please state what it represents, placing letters upon such parts as you may desire, to make your answer more clear?

A. I have examined the drawing referred to. It represents a perspective side-view of two sections on one side of the central aisle of what has been called the Toledo car, showing transverse seats, with partitions between the seats, the seats facing each other, the backs of the seats resting against the partitions, which latter are made hollow and are provided with diaphragms arranged to slide up and down in the partitions, to furnish head and foot boards for berths at night, and to be concealed out of the way in the partitions for day use. 3307

The right-hand section is shown as prepared for day use, and the left hand section is shown with the berths made up for night use.

A bar, *m*, extending from seat to seat in the right-hand section, is shown in place as it would be for night use, and is for the purpose of supporting the seat cushions when used for the lower berth. 3308

Letter *b* represents the sliding diaphragms; letter *h*, the partitions; letter *A*, the upper berth; letter *C*, the supports for the upper berth, two of which, near the aisle of the car, are pivoted to the edges of the upper berth, and extending down to a socket in the partition *h*, support the front of the berth.

There are also two holders on the wall of the car upon which the outer edges of the upper berth are supported. These are also marked *C*.

3309 Above the diaphragms *b*, are represented on the left hand a closed filling piece which fits between the top of the diaphragm and the roof of the car, to complete the separation between the berths at night; on the right hand between the two sections is an open-work filling piece over the diaphragm *b*, which partially separates the two sections near the roof of the car. The left hand lower berth is made up ready for sleeping by placing in a horizontal position the movable cushioned backs used for the seats
3310 in the day time. These backs, with the cushioned seats proper, fill the space between the partitions and form a bed, the central cushions resting upon a slide or bar *m*.

The cushioned backs are marked E, and the seat cushions B.

Counsel for defendants offers and files in evidence in their behalf the drawing just referred to, and the same is marked "Defendants' Exhibit Drawing Toledo Car. T. H. Palmer, Special Exr."
3311

Counsel for complainants objects to the introduction of the drawing referred to in evidence, as incompetent, irrelevant and immaterial.

Q. 17. After examining the drawing now shown you, please state what it represents, placing letters upon such parts as you may desire, to make your answer more clear?

3312 A. I have examined the drawing referred to. It represents a perspective view of two sections of berths, one on each side of the central aisle of what has been called the Rock Island Car. On the right the berths are represented as made up for night use, and on the left are represented the seats in condition for day use, with the upper berth in its angular position, to be out of the way, as it would appear when not in use for a sleeping berth. Letter A represents the upper berths, letter B the hinges upon which they turn, letter C the sustaining devices,

J the head or foot-board, and M the end of the car, 3313
having a door in the center; letter *e* represents the
central aisle of the car, and letter *a* the floor.

Counsel for defendants offers and files in
evidence in their behalf the drawing just re-
ferred to, and the same is marked "Defendants'
Exhibit Drawing Rock Island Car. T. H.
Palmer, Special Ex'r."

Counsel for complainants objects to the in-
troduction of the drawing referred to in evi-
dence, as incompetent, irrelevant and imma- 3314
terial.

Q. 18. After examining the drawing now shown
you, please state what it represents, placing letters
upon such parts as you may desire, to make your
answer more clear?

A. I have examined the drawing referred to. It
represents, in the left-hand figure, a side view of the
interior of what has been called the Stephenson Car,
looking from the central aisle towards the transverse 3315
seats and side wall of the car. Letter *h* represents
the partition between the backs of the transverse
seats. Letter O represents the cushioned backs, and
letter P the seat cushions. There are two sections
represented in this drawing, the left-hand
one arranged for use of passengers while sitting,
and the right-hand one arranged for the use
of passengers while lying down, and in this
section the cushioned seats P, are represented as
being placed centrally between the partitions and 3316
resting on a cross-bar, R, stretching from seat to
seat. The cushioned backs, O, of the seats are also
laid down in a horizontal position so that the tops
of all the cushions are in a horizontal plane. The
right-hand figure represents an end view looking
down the central aisle of the car inside of the car.
The seats are arranged transversely on each side of
the central aisle. The same letters indicate the
same parts as in the left-hand drawing referred to

3317 by me—*e* represents the central aisle and *a* the floor of the car.

Counsel for defendants offers and files in evidence in their behalf the drawing just referred to, and the same is marked "Defendants' Exhibit Drawing Stephenson Car. T. H. Palmer, Special Exr."

3318 Counsel for complainants objects to the introduction of the drawing referred to, in evidence, as incompetent, irrelevant and immaterial.

Q. 19. After examining the drawing now shown you, please state what it represents, placing letters upon such parts as you may desire, to make your answer more clear?

A. I have examined the drawing referred to. It represents a perspective view of a part of the interior of what has been called the Erie Car, looking lengthwise of the central aisle.

3319 It shows two sections, one on each side of the central aisle, each section having two berths. On the right-hand side the berths are shown as made up for sleeping purposes, and on the left-hand side the upper berth turned up towards the roof of the car as it would be when not in use as a berth, and the seats in condition for use for passengers sitting. Letter *e* represents the central aisle; letter *a* the floor; letter A the hinged upper berths; letter B the hinges which connect the upper berths with the sides of the car; letter C the sustaining devices for the upper berths.

3320

Counsel for defendants offers and files in evidence in their behalf the drawing just referred to, and the same is marked "Defendants' Exhibit Drawing Erie Car. T. H. Palmer, Special Ex'r."

Counsel for complainants objects to the introduction of the drawing referred to, in evidence, as incompetent, irrelevant and immaterial.

Q. 20. After examining the drawing now shown 3321
you, please state what it represents, placing letters
upon such parts as you may desire, to make your
answer more clear?

A. I have examined the drawing referred to. It
represents in the left-hand figure a side view of the
transverse seats, with partitions between them and
one side of the car which has been called the Spring-
field Car, looking from the central aisle towards one
side of the car. Letter *h* represents the partitions
between the backs of the seats; letter *S* the cushions 3322
upon the backs of the seats; letter *T* the seats and
seat cushions.

The right-hand figure represents an end view of
the car looking down the inside of the central aisle,
showing transverse seats on each side of the central
aisle. The letters denote the same parts referred
to by me in describing the left-hand figure. Letter
e is the central aisle, and letter *a* the floor of the car.

Counsel for defendants offers and files in
evidence in their behalf the drawing just re- 3323
ferred to, and the same is marked "Defend-
ants' Exhibit Drawing Springfield Car. T.
H. Palmer, Special Examiner."

Counsel for complainants objects to the in-
troduction of the drawing referred to, in evi-
dence as incompetent, irrelevant and imma-
terial.

Q. 21. After examining the drawing now shown
you, please state what it represents, placing letters 3324
upon such parts as you may desire to make your
answer more clear?

A. I have examined the drawing referred to. It
represents a perspective view of the interior of what
I have called the Fort Wayne Car looking down the
central aisle, one section on each side only being
shown. Upon the right hand side of the aisle two
berths are shown made up for night use, and upon
the left hand side the upper berth in the day posi-
tion, or as it would be when turned up in the day-

3325 time; also showing transverse seats in position for use. Letter A represents the upper berth, C C the suspending devices, *e* the aisle of the car and *a* the floor. C upon the left hand side of the aisle placed on the wall of the car is a support for the inner side of the upper berth. Letters D on the right hand side of the drawing represent folding flaps, which form partitions and head and foot boards for the upper berths, and letters E represent folding partitions, and head and foot boards for the lower berths. On the
 3326 left hand side of the drawing these folding partitions D and E are represented as folded against the side of the car in the position they would be for day use.

Q. 22. Have you examined and do you understand the contents of

Defendants' Exhibit Myer, 1854 patent.

“ “ Leroy, '55 English patent.

“ “ McGraw, 1838 patent.

“ “ Emery, 1848 patent.

3327 “ “ Woodruff, 1856 patent, No.
 16,160.

Defendants' Exhibit Warren, 1850 patent.

“ “ Buell, 1852 patent.

“ “ Harrington, 1858 patent.

“ “ Creighton, 1858 patent.

“ “ Delaney and Moore, 1858
 patent.

Defendants' Exhibit McNeill, 1859 patent, No. 24,-
 225.

3328 Defendants' Exhibit Dirks, 1859 patent.

“ “ McNeill, 1859 patent, No.
 24,136.

Defendants' Exhibit Knight, 1859 patent.

“ “ Luce & Morrison, 1859 patent.

“ “ Hazeldine, 1855 English pa-
 tent.

Defendants' Exhibit McCurdy, 1857 patent.

“ “ Mann, 1858 patent.

“ “ Green, 1858 patent.

“ “ Payne & Reid, 1859 patent.

Defendants' Exhibit	Brown, 1860 patent.	3329
"	" Pennoyer, 1860 patent.	
"	" Burke & Sulger, 1860 patent.	
"	" Fisher, 1860 patent.	
"	" Scientific American, 1861?	

A. I have examined the exhibits referred to in the question, and I think I do understand the contents thereof.

Q. 23. Have you caused to be constructed a model illustrating with substantial correctness the construction and mode of operation of the devices described and shown in Defendants' Exhibit Myer 1854 Patent; and if so please produce the same? 3330

A. I have, and now produce said model.

Counsel for defendants offers and files in evidence in their behalf the model just referred to and the same is marked Defendants' Exhibit Model, Myer, 1854 Patent, T. H. Palmer, Special Examiner.

Q. 24. Have you caused to be constructed a model illustrating with substantial correctness the construction of the devices described in Defendants' Exhibit Leroy, 1855, English Patent, and particularly shown in figures 5 and 6 of the drawings of the same? 3331

A. I have, and now produce said model.

Counsel for defendants offers and files in evidence in their behalf the model just referred to and the same is marked Defendants' Exhibit Model Leroy 1855, English Patent, T. H. Palmer, Special Examiner. 3332

Q. 25. Have you caused to be constructed a model illustrating with substantial correctness the construction and mode of operation of the devices described and shown in Defendants' Exhibit Knight 1859 Patent, and if so please produce the same?

A. I have, and now produce said model.

Counsel for defendants offers and files in evidence in their behalf the model just referred to and the same is marked Defend-

3333 ants' Exhibit Model Knight 1859 Patent. T.
H. Palmer, Special Examiner.

Q. 26. Have you caused to be constructed a model illustrating with substantial correctness the construction and mode of operation of the devices described and shown in Defendants' Exhibit Luce & Morrison 1859 Patent, and if so please produce the same?

A. I have, and now produce said model.

3334 Counsel for defendants offers and files in evidence in their behalf the model just referred to, and the same is marked Defendants' Exhibit Model Luce & Morrison 1859 Patent. T. H. Palmer, Special Examiner.

Q. 27. Have you caused to be made a model representing with substantial correctness the construction and operation of the devices described in Defendants' Exhibit, Hazeldine, '55, English Patent, and especially shown in figures 1 to 4 inclusive, so far as the
3335 upper beds in relation to the ambulance are concerned, and if so, please produce the same?

A. I have, and now produce said model. I have put in two sustaining straps for the edge of the upper bed, supposing that there would be at least two; figure 4 being an end view may show one or more straps.

3336 Counsel for defendants offers and files in evidence in their behalf the model just referred to and the same is marked Defendants' Exhibit Model, Hazeldine, 1855, English Patent. T. H. Palmer, Special Examiner.

Q. 28. Have you caused to be made a model, representing with substantial correctness the construction and operation of the devices described and shown in Defendants' Exhibit, Green, 1858, Patent, so far as the structure of the upper berth in relation to the car is concerned, and if so, please produce the same?

A. I have, and now produce said model.

Counsel for defendants offers and files

in evidence in their behalf the model just referred to, and the same is marked Defendants' Exhibit Model, Green, 1858, Patent. T. H. Palmer, Special Examiner. 3337

Q. 29. Have you caused to be constructed a model illustrating with substantial correctness the construction and mode of operation of the devices described and shown in Defendants' Exhibit Burke and Sulger 1860 Patent; and if so please produce the same?

A. I have, and now produce said model. 3338

Counsel for defendants offers and files in evidence in their behalf the model just referred to, and the same is marked Defendants' Exhibit Model Burke 1860 Patent, T. H. Palmer, Special Examiner.

Q. 30. Have you examined and do you understand the contents of Defendants' Exhibit Original Woodruff 56, Patent, and Complainants' Exhibit No. 1, being the reissue thereof here in suit? 3339

A. I have, and think I do understand the same.

Q. 31. Have you caused a model to be made showing with substantial correctness the construction and operation of the devices shown and described in the exhibit last mentioned?

A. I have, and I now produce said model.

Counsel for defendants offers and files in evidence in their behalf the model just referred to, and the same is marked Defendants' Exhibit Model, Woodruff, Reissue, T. H. Palmer, Special Examiner. 3340

Q. 32. Have you examined and do you understand the contents of Complainants' Exhibit No. 2?

A. I have, and I think I do understand the same, so far as they are at all intelligible.

Q. 33. Have you examined and do you understand the contents of Defendants' Exhibit Original Wheeler '59 Patent, and Complainants' Exhibit No.

3341 3., being the reissue of said original patent here in suit?

A. I have, and I think I do understand the same.

Q. 34. Have you caused to be made a model representing with substantial correctness the construction and operation of the devices described and shown in the said two last mentioned exhibits?

A. I have, and I now produce the same.

3342 Counsel for defendants offers and files in evidence in their behalf the model just referred to, and the same is marked Defendants' Exhibit Model Wheeler 1859 Patent and Reissue, T. H. Palmer, Special Examiner.

Q. 35. Have you examined and do you understand the contents of Defendants' Exhibit Original Field and Pullman 1865 Patent, and Complainants' Exhibit No. 4, the latter being a reissue of the same?

A. I have, and I think I do understand the same.

3343 Q. 36. Have you caused to be constructed a model illustrating with substantial correctness the construction and operation of the devices described and shown in Complainants' Exhibit No. 4?

A. I have, and I now produce said model.

Counsel for defendants offers and files in evidence in their behalf the model just referred to, and the same is marked Defendants' Exhibit Model Field and Pullman Reissued Patent. T. H. Palmer, Special Examiner.

3344 Q. 37. Have you examined the two models marked respectively Complainants' Exhibit Defendants' Car and Complainants' Exhibit Defendants' Spring Pulley, and have you read the stipulation entered into between the counsel for the respective parties herein, dated December 21, 1880, and if so, do you understand the construction and operation of the things intended to be represented by those models and referred to in said stipulation?

A. I have, and I think I do understand the same.

Q. 38. Please state what you understand to be the alleged invention described and shown in Defend-

ants' Exhibit original Woodruff '56 Patent, and referred to in the claims thereof? 3345

A. I understand the invention to be an improvement in railroad car seats and couches. The invention is divided and described in three sections of claim, comprehending in said three claims the combination in a compartment of a railroad car, of certain devices whereby three tiers of berths may be formed for sleeping purposes and seats may be provided for four persons during the day time. The devices shown and described are constructed to fold up when the parts are adapted to day use, and to unfold so that they can be extended towards each other for night use. 3346

The upper berth of the compartment consists of two folding pieces pivoted to a partition on each side of the compartment and extending down from the roof of the car, which folding pieces, when unfolded and extended towards each other, meet at the centre of the compartment, and being supported in a horizontal position form an upper berth against the upper side of the car. 3347

The middle berth is formed of folding pieces hinged together and also hinged to the back of the seat frame so that when these pieces are unfolded and extended towards each other they form a middle berth, the parts being supported in a horizontal position for the purpose.

The lower berth is a depressed one and is formed from four permanent horizontal pieces called cushioned frames which are permanently fixed to a fixed platform raised a little above the floor of the car, in connection with four movable frames which are held on a level with said fixed frames and between them, by legs or feet which rest upon the floor of the car and enter into holes in the floor of the car, said legs being provided with shoulders to hold these movable frames at a proper level. 3348

In the drawings the permanent frames are marked *i i i i* and the movable frames *j j j j*.

3349 The movable frames *j* are also connected with the permanent frames each by two links which cause the movable frames, when swung up around the joints of the links, to maintain a horizontal position supported by these links marked *k* in the drawing and by the legs *m m* after the fashion of a four legged chair. On the top of this frame passengers may sit facing each other in the compartment.

These seats are prevented from tipping down backwards by the folded frame which forms a part of
3350 the middle berth, and which, in the day time, forms a back for the passengers to rest against.

In the preamble of the specification the inventor states that he has invented certain new and useful improvements in convertible seats and couches for railroad cars, and he says that his invention relates to improvements of a prior invention of his, and that the first part of his present invention consists of a certain combination by which the four seats, two at each end, in each of a series of com-
3351 partments on each side of the car, may be converted to form two depressed couches. The first claim of the patent is as follows: "The combination of the
"movable and fixed frames on one side of each
"compartment, with the movable and fixed frames
"on the opposite side thereof, to form each of two
"depressed couches when unfolded and connected,
"and which may be converted into two opposite
"seats when the two movable seats are thrown up
"and over the permanent frames, substantially as
3352 "described." The way that this is described, and shown in the patent is as follows: The depressed berth is formed by the two fixed frames *i i* on each side of the compartment in connection with two movable frames resting on legs between the two fixed frames, as I have previously described. When the two movable frames upon each side of the compartment are to be used to sit on, they are thrown up and over the permanent frames, and are supported by their chair-like legs and links, together with the portion of the middle berth which forms the back of the seat as I have previously described.

The second claim of the patent is as follows: 3353
“Combining each of the hinged folding backs on
“one side of each compartment with each of the
“corresponding hinged backs on the opposite side
“of the same compartment by means of the fold-
“ing or connecting frames or equivalents therefor,
“substantially as described, whereby the same may
“be used as backs for the seats or as couches, as set
“forth.”

This claim, as I understand it, relates to the combination of parts which form the middle berth, so 3354
that they shall also form, when turned down, the
backs of the two opposite seats. It will be observed
that these hinged backs are so hinged to the frames
or the partitions of the compartment, that when
the frames or hinged backs are thrown up into a
horizontal position they will leave room enough
between them and the depressed couches to render
the depressed couches practically useful for sleeping
purposes.

These hinged backs cannot be turned up until the 3355
movable seats or cushioned frames *j j* are thrown
down to form the depressed couch, so that in operation
for day use as seats the frames *j j* are combined
with the parts of the middle berth, and the
parts *i i* are out of use.

The third claim of the patent refers entirely to the
upper berth, and I need not particularly refer to it
again, having already described its construction and
mode of operation.

Q. 39. Compare the car, Complainants' Exhibit 3356
Defendants' Car, and the car referred to in the said
stipulation, having no hinges to connect the backs
and seats together and with a bar bridging the space
between the seats on the aisle side, with the inventions
described, shown and claimed in the exhibit
mentioned in the last question, and state
whether or not, in your opinion, either of said cars
contains the said inventions or either of them,
giving your reasons for any opinion you may express?

- 3357 A. I have made the comparison required by the question, and am of the opinion that neither of said defendants' cars does contain the inventions described in the claims and specification of the said Woodruff patent. My reasons are as follows: Neither of said defendants' cars, in my opinion, does contain the elements of the combinations or the combinations of elements described in either of the claims of said Woodruff patent. Said defendants' cars each contains compartments for sleeping-berths, and is so
3358 constructed that four persons may be seated during the day, but the parts combined to produce these results are not the parts, nor are said parts combined substantially in the manner shown and described in said Woodruff patent. Neither of said defendants' cars contains any depressed berth nor any parts corresponding with the parts of the Woodruff patent for making a depressed berth or any berth. Neither of defendants' cars has any fixed frame *i*. Neither has it any seat having the con-
3359 struction and mode of operation of the movable seat of the Woodruff invention. Each of defendants' cars has, however, cushioned seats which are carried towards the centre of the compartment, and together with movable back frames, form a berth on a level with the seats as used in the day time.

In the Woodruff patent the backs of the seats do not enter into the combination for the lower berth but are parts of a middle berth. In the defendants' cars the lower berth could not be formed without
3360 using the backs of the seats, and in the Woodruff construction the depressed berth could not be formed by using the backs of the seats.

In the defendants' cars the chair-like seat frame of the Woodruff patent could not be used for the seat, nor could the permanent frames *i i*, of the Woodruff patent be used in the making up of the defendants' lower berth.

In the defendants' cars all the parts within the compartment are so constructed and arranged as to form two tiers of berths only, whereas in the Wood-

ruff invention the construction and arrangement are especially adapted to the formation of three tiers of berths, requiring a peculiar construction and mode of operation of the parts to effect the result. For these reasons I am of the opinion that the defendants' car constructed in either of the forms mentioned in the question does not contain the inventions described in the Woodruff patent. 3361

I have not particularly compared the construction and operation of the upper berths in the defendants' cars and the Woodruff patent. They are totally different both in construction and mode of operation. The upper berth of each of the defendants' cars is hinged to the partitions near the wall of the car, and swings in a vertical direction towards the roof of the car, until the front edge of the berth comes up to the roof and stands in an angular position, whereas in the Woodruff car the upper berth is hinged to short partitions running crosswise of the car, and which berth folds up against said partitions in the direction of the length of the car, or in a direction at right angles to the direction in which the upper berths of the defendants' cars turn. 3362 3363

Adjourned to to-morrow, March 29th, 1882, at 10 o'clock A. M.

NEW YORK, March 29th, 1882.

Met pursuant to adjournment; counsel appearing as before. 3364

WILLIAM C. HICKS' EXAMINATION CONTINUED :

Q, 40. Please compare the contents of defendants' exhibit original Woodruff 1856 Patent with the contents of complainants' exhibit No. 1, and state what changes, if any, have been made in the latter from the former?

A. I have made the comparison required by the question.

3365 As I understand the original patent of Woodruff the inventions therein described consist of three combinations of mechanism, the first for the formation of a depressed lower berth by means of fixed and movable frames, so that the movable frames may be used for seats for passengers by day; the second combination for the formation of a middle berth from the hinged backs used for the seats by day, and the third combination for the formation of a third or upper berth in the manner described in the specification and shown in the drawings.

3366 These three berths which I have described were to be arranged in one compartment of the car, one above the other, and the parts were especially adapted and combined so that three couches could be placed in each compartment for night use, and so that the two lower couches could be converted into seats for four passengers by day. As I understand the reissue of this Woodruff patent, the inventions described and particularly referred to in the first.

3367 three claims thereof, relate particularly to the compartments themselves and the distance apart at which the partitions are located, so that a proper length can be given to the couch at night.

The reissue specification omits the three statements of invention contained in the specification of the original patent, and I find the following subject matter added to the reissue specification, which is not contained in the original. I quote from the reissue specification:

3368 “The seats are arranged in pairs, so that each pair of seats, with its intermediate footway, shall together constitute the proper length for a couch —say six feet.”

The distance that the partitions are apart is described in the reissue as an important desideratum, and great stress is laid upon it, although it is not mentioned at all in the original patent.

I find also that all reference to the fixed frames *i i i i*, which are made elements of the first claim of the original patent, is omitted in the description of

the reissued patent. These fixed frames, *iiii*, are necessary elements in the combination of parts for making the depressed berths of the Woodruff invention. 3369

In the original patent the links *kk*, are shown and described for supporting the backs of the seats *jj*, and for connecting them with the fixed frames *iiii*, so that the seats *jj*, may be used in the daytime, and may be swung forward and downward around the joints of links *kk*, to form a depressed berth in combination with the fixed frames *iiii*. No reference is made to these links *kk*, in the specification of the reissued patent. 3370

The reissued patent referring to the support of the seats when drawn forward, states that they rest at the inner side upon a ledge or support attached to the car body, and upon small feet or their equivalent on the side towards the aisle or passageway.

This statement is erroneous. The original patent describes and shows four seats *jjjj*, in each compartment, two of them next to the side of the car, and two of them next to the aisle of the car. Each of these seats has two front legs which, when the seat is turned down, enter holes in the floor of the car until arrested by a shoulder on each of the legs which strikes the floor and thus supports the front of the seat. The drawings show the ledge of the wall of the car at the same height as the bottom of the seat frame so that the inner edge of two seats might rest partially on this ledge notwithstanding that there is a leg provided with a shoulder for that support close to the side of the car. 3371 3372

The two other seat frames near the aisle of the car can have no ledge support whatever, and must depend upon the legs alone.

The legs next to the ledge upon the side of the car could not be dispensed with, for they are necessary for the support of the seats when in their raised position for day use.

Q. 41. Compare the car complainants' Exhibit Defendants' Car, and the car referred to in the said stipulation, having no hinges to connect the backs

3373 and seats together, and with a bar bridging the space between the seats on the aisle side, with the alleged invention described and shown in complainants' Exhibit No. 1, and referred to in the first three claims thereof, and state whether or not, in your opinion, either of said cars contains the alleged inventions, or either of them, referred to in said claims, giving your reasons for any opinion you may express?

3374 A. I have made the comparison required by the question.

The first claim of the reissued patent is as follows:

"In the ordinary long passenger railway car, the combination of a series of seats arranged in pairs transversely on each side of the central passageway, with diaphragms or partitions between each pair of transverse seats, at such distance apart as to permit of berths between these diaphragms or partitions."

3375 If this claim shall be construed by the Court to be for a passenger railway car having the combination of a series of seats substantially such as are shown in the Woodruff reissued patent, arranged in pairs transversely on each side of the central passageway, with diaphragms or partitions between each pair of transverse seats, constructed substantially as shown in the Woodruff reissued patent, at such a distance apart as to permit of berths of the construction and operation shown in the Woodruff between these diaphragms or partitions; then I am of the opinion
3376 that neither of the defendants' cars referred to in the question contains the combination of mechanisms or parts described in said first claim of the Woodruff reissue; my reasons are as follows:

The defendants' cars referred to in the question, have a series of seats arranged in pairs transversely on each side of the central passageway, but such seats are not constructed nor are they operated as are the seats shown in the Woodruff reissue.

The seats of the defendants' cars are simply cushioned frames supported in a horizontal plane at a

proper height from the floor for convenient day 3377
use, and are not in any manner connected with permanent cushioned frames for the purpose of forming a couch; they are simply carried forward on the level of the seat towards the center of the compartment and are never depressed to form part of a depressed couch.

They are supported when carried forward for a couch by the same ledge on the wall of the car, at the same height from the floor as they are when used as seats, and on the side near the aisle the said 3378
cushioned seats, in some of the defendants' cars, like those represented in complainants' exhibit defendants' car, have no central support, and in the other cars of the defendants', referred to in the question, said cushioned seats are supported near the aisle of the car by a bar extending from seat to seat at the same level as the ledge near the wall of the car. The cushioned seats of the defendants' cars have no legs to support them in their day position, or in their night position. They have no links *k k*, as shown 3379
in the Woodruff patent, making part of the Woodruff seat construction, neither are they swung forward and downward in making up the couch, which is a distinguishing characteristic of the Woodruff contrivance.

The back cushions of the seats of the defendants' cars, are simply lowered to the level of the seats and form part of the lower couch. They are not hinged to the back frames or partitions, as in the Woodruff construction, but are entirely removable 3380
away from said partitions, and they form no part in making up an upper berth. If the back frames of the defendants' car seats were not removable from the partition and were hinged to the partition, as in the Woodruff construction, they could not be used for making up the lower berth, and would not only be useless for the purpose, but so much in the way as to prevent the formation of a lower couch by the seats and seat backs constructed and arranged as are those of the defendants' cars. The

- 3381 lower berths of the defendants' cars could not be made up by simply moving the seat cushions towards the center of the compartment, for the backs of the seats are required to make up the length of the berth; whereas, in the Woodruff construction, on account of the additional fixed frames *i i i i*, and the peculiar construction of the seats and their combination with the fixed frames, a depressed berth may be made up by swinging the seat forward and downward, the back cushions being used for the
- 3382 middle couch and incapable of being used in making up a lower couch. For these reasons I am of the opinion that under the construction of the first claim, as I have assumed that the Court might construe it, that the defendants' cars mentioned in the question do not contain the combination described in said first claim of the reissued patent. But on the other hand, if the Court shall construe said first claim as being broadly for the combination in the ordinary long passenger railway car, of a series of
- 3383 seats of any construction and operation, arranged in pairs transversely on each side of the central passageway, with diaphragms or partitions between each pair of transverse seats of any construction and operation whatever, at such distance apart as to permit of berths of any construction and operation between these diaphragms or partitions, then I am of the opinion that both of said defendants' cars referred to in the question do contain the combination described in the first claim of said Woodruff reissue.
- 3384 The second claim of the reissued patent is as follows:
- “The arrangement of the back frame of said
“transverse seats so that the frame which supports
“the back cushion by day may form also the
“partition between the lower couches by night.”
- If this second claim shall be construed by the Court to be for the arrangement of the back frame of said transverse seats, constructed and operating substantially as shown in said reissued patent, so that the frame which supports the back cushion by

day, constructed, arranged and operated substantially as shown in said reissue patent, may form also the partition between the lower couches by night, said couches being constructed, arranged and operated substantially as shown in the patent, then I am of the opinion that neither of said defendants' cars referred to in the question contains the arrangement described in the second claim of the reissued patent. 3385

My reasons for this opinion are as follows:

The back cushions of the defendants' cars are not constructed with hinges at the top to connect them to the back frames of the transverse seats, but on the contrary are simple cushioned frames which are entirely separable from said back frames. The back cushions of the reissued patent are provided with hinges which permanently connect them with said back frames, but in such a manner that the back cushions can be moved around the pivots of said hinges on the back frames, so that they may be swung up into a horizontal position for a middle berth. The arrangement of the back frames in regard to the back cushions of the Woodruff contrivance is entirely different from the arrangement between the back frames and the back cushions in the defendants' cars. The back cushions of the defendants' cars are so arranged in reference to the back frames that they can be entirely removed from them and be laid in a horizontal position by being laid down on the level of the seat cushions to form a lower couch, whereas the back cushions of the reissued patent are hinged and arranged in reference to the back frames, so that the back frames may sustain the back cushions by the hinges while forming another and a middle berth. 3386 3387

For these reasons I am of the opinion that under the assumed construction of the second claim of the reissue, the defendants' cars mentioned in the question do not contain the arrangement of parts and elements described in the second claim of said patent. 3388

- 3389 If, however, the Court shall construe the second claim of the reissue to be for the arrangement of the back frame of said transverse seats, so that the frame which supports any back cushion, however constructed and arranged in reference to the back frame, whether attached by hinges or not, and whether it is used for a lower couch or a middle couch, or whether removable entirely from the back frame, or movable on hinges attached to the back frame, so that said back frame may form the
- 3390 partition between the lower couches by night, then I am of the opinion that said defendants' cars mentioned in the question do contain the arrangement of parts and elements described in said second claim of the reissue.

The third claim of the reissued patent is as follows:

- “The combination of the set of transverse seats,
“the supporting back frames, and removable back
“cushions, by which the proper length can be given
3391 “to the couch at night and the proper support for
“the passengers' backs by day.”

- If this claim should be construed by the Court to be for the combination of the set of transverse seats shown in the Woodruff reissue, constructed and operating substantially as shown in the reissued patent, with the supporting back frames and the removable back cushions constructed and operating substantially as shown in said reissued patent, by which the proper length can be given to the couch
- 3392 at night and the proper support for the passengers' back by day; then I am of the opinion that neither of the defendants' cars referred to in the question contains the combination of parts and elements described in said third claim, for the following reasons:

The back cushions of the defendants' cars are strictly removable; that is to say, they are detachable from the back frames; whereas the back cushions of the Woodruff construction, are not strictly removable, but movable around hinges,

and are not detachable. If the back cushions of 3393
the defendants' cars were not detachable, and were
hinged as are those in the Woodruff construction,
they could not be used to form the lower couch for
which they are used. If the back cushions of the
Woodruff construction were not attached fixedly to
the back frames by hinges, they could not serve
the purpose for which they are designed, of forming
a middle couch when turned up.

It is true that the back cushions of the defend-
ants' cars and of the construction shown in the 3394
Woodruff reissue furnish supports for the passen-
gers' backs by day ; but here the similarity ends.
They are differently connected with the back frames,
movable in different directions, and for different
purposes, and in a different manner for night use.
For these reasons I am of the opinion that under
the assumed construction of the third claim of the
reissue, that the defendants' cars mentioned in the
question do not contain the combination of mechan-
ism described in said claim. 3395

If, however, the Court shall construe said third
claim of the reissue as being for the combination of
any set of transverse seats, the supporting back
frames, and the back cushions, however remova-
ble, or movable on hinges or otherwise, without
regard to the method or purpose of removing them,
whether for use for the middle berth, or for use as
a part of the lower berth, by which the proper
length can be given to the couch at night, and the
proper support for the passengers' backs by day, 3396
then I am of the opinion that both of said defendants'
cars mentioned in the question do contain the com-
bination of parts and elements described in the
third claim of the reissued patent.

Adjourned to to-morrow, March 30th, 1882, at 10
o'clock, A. M.

3397

NEW YORK, March 30, 1882.

Met pursuant to adjournment, counsel appearing as before.

WM. C. HICKS' EXAMINATION CONTINUED:

Q. 42. Please compare the devices of the cars referred to in question 3, represented in part by Defendants' Exhibit Richmond Car, and in question 5, represented in part by Defendants' Exhibit Chambersburg Car, and in Defendants' Exhibit Myer, 3398 1854 patent, with the devices shown in complainants' Exhibit No. 1, pointing out wherein the devices of each of said cars resemble or differ from the devices shown in said last-named exhibit, restricting your answer particularly in such comparison to the devices for making and separating the lower berths?

A. I have made the comparison required by the question. I find that what I have called the Richmond Car, like the car of the Woodruff reissue, is 3399 a railroad car, having a central passageway running longitudinally through the car, with seats arranged on each side of the central passageway, with diaphragms or partitions between the seats at such a distance apart as to permit of berths between these diaphragms or partitions; but the seats are not, however, arranged in pairs transversely on each side of a central passageway, as in the Woodruff reissue, but are arranged longitudinally, parallel with said passageway, against the walls of the car on 3400 each side. The lower berths are made up between these partitions, by turning over, longitudinally, parallel with the central passageway, seat frames hinged to a lower frame, which forms the lower portion of the seat, so that said movable frames, when turned out and resting upon legs reaching to the floor of the car, stand at a level with the top of the fixed seat frames and together form wide lower berths parallel with the central passageway between the partitions or diaphragms, while in the Woodruff reissue the lower berths are

formed by the peculiar seats connected with depressed stationary frames, as I have before stated. The fixed partitions of this car are transverse to the central aisle of the car, extend from the floor to the ceiling and in the direction towards the central aisle of the car from the side of the car on each side as far as the width of longitudinal seats. 3401

When the lower berth is made up it extends towards the central aisle of the car further than the width of the partitions, and additional movable partitions extending beyond the fixed partitions are attached to the head and foot of the berth and carried up high enough to separate the berths and the passengers occupying them. 3402

In the drawings of the reissued patent the diaphragms or partitions are shown extending up about as high as the heads of the passengers, but the specification says that they can be carried up to the roof of the car so as to form partitions between all of the berths. Therefore it is obvious that the partitions of the Woodruff construction are substantially the same as the partitions in what I have called the Richmond car. 3403

I find on comparing the devices shown in Complainants Exhibit No. 1 with the devices contained in what I have called the Chambersburg Car, as required by the question, that said Chambersburg Car, like the car of the Woodruff reissue, is a railroad car having a central passageway running longitudinally through the car, with seats arranged on each side of the central passageway, with diaphragms or partitions between the seats at such a distance apart as to permit of berths between these partitions; but the seats are not, however, arranged in pairs transversely on each side of a central passageway, as in the Woodruff reissue, but are arranged longitudinally along the sides of the walls of the car parallel with said passageway on each side thereof. 3404

In the gentlemen's sleeping apartment the longitudinal seats form the lower berths between the par

- 3405 titions, and the middle berths are formed by turning the backs of said longitudinal seats up to a horizontal position, the frames of said backs being hinged to the side of the car for this purpose. The lower berths are therefore of the same height as the seats, are parallel with the central passageway, and are between the partitions or diaphragms, while in the Woodruff reissue the lower berths are formed by the peculiar transverse seats connected with the depressed stationary frames as I have before stated.
- 3406 In the ladies' apartment of said Chambersburg Car, there is a swinging flap hinged to the front of the longitudinal seat, which is allowed to hang vertically downward during the daytime, but which is swung upward at night to form a lower berth, and is supported on its front side by legs extending to the floor of the car near the central passageway or catches entering into the partition between the gentlemen's and ladies' apartments and the end of the car, and, as in the Wood-
- 3407 ruff construction, this latter lower berth extends nearly to the central aisle of the car with a partition the full width of the berth.

The fixed partitions of said Chambersburg Car are transverse to the central aisle of the car, extend from the floor to the ceiling and in the direction towards the central aisle of the car from the side of the car on each side as far as the width of the lower berths, and in this respect are substantially the partitions described in the specification of the reissued

3408 patent, which says that they may be carried up to the roof of the car so as to form partitions between all of the berths.

I find on comparing the devices shown in complainants' Exhibit No. 1 with the devices contained in Defendants' Exhibit Myer 1854 Patent as required by the question, that said Myer car, like the car of the Woodruff reissue, is a railroad car, having a central passageway running longitudinally through the car, with seats arranged on each side of the central passageway transversely as in the Wood-

ruff reissue, but without partitions between the said 3409
seats. I find also, as in the Woodruff reissue, trans-
verse seats constructed and arranged to form lower
berths each side of the central passageway between
the end frames of the seats and the walls of the car.
These lower berths differ from the lower berths
shown in the Woodruff reissue in that they are
made up by the seat cushions laid at about the level
of the seats as used in the day time, and are not
depressed as in the Woodruff reissue. These seat
cushions are hinged together and are in two parts, 3410
which are so folded in the day time as to make a
transverse seat, but are opened by swinging the upper
portion on the hinges, and are laid in a horizontal
position so as to fill up the space between two seats
when a lower berth is to be made up. These mov-
able cushioned frames of the seats rest upon pins
which are drawn out from the back of the fixed seat
frame in front of it when they are to be used as a
berth. This construction differs from that shown in
the Woodruff reissue in that the berths referred to 3411
are made up entirely from the seat cushions, and
the berths are not depressed, whereas the lower
depressed berths of the Woodruff reissue are formed
by the peculiar seats connected with depressed
stationary frames, as I have before stated.

Q. 43. Compare the car structure contained in De-
fendants' Exhibit Leroy, 1855, English Patent, with
the alleged invention embodied in the Complainants'
Exhibit No. 1, and referred to in the first claim
thereof, and say whether, in your opinion, said 3412
English patent contains the said alleged invention,
giving your reasons for any opinion you may ex-
press?

A. I have made the comparison required by the
question. I find described and shown in said Leroy
English patent, in the ordinary long passenger rail-
way car, the combination of a series of seats,
arranged in pairs transversely on each side of
the central passage way, with diaphragms or par-
titions between each pair of transverse seats, and

•

3413 placed at such a distance apart as to permit of berths between these diaphragms or partitions.

The inventor describes several constructions of railway cars. The first construction described consists in arranging railway carriages with a longitudinal passage, with arm-chairs or seats arranged two and two, one behind the other, on each side of the passage. The inventor says these seats, which are placed side by side, may be separated or partitioned off from one another either by a permanent
3414 partition or by curtains, as may be desired. In a second construction shown in Figures 3 and 4, the inventor says he arranges railway carriages with seats or beds in two tiers, one above the other, with partitions between the seats or beds running cross-wise of the car, or at right-angles to the central passageway; and he also, as a modification of this second construction, describes and shows in Figures 5 and 6, railroad carriages or cars having a central longitudinal passageway, with transverse
3415 seats on each side of said central passageway, with partitions between the seats, extending from the floor to the roof of the car, the seats being placed back to back against the partitions, so that the passengers in each compartment sit facing each other.

In the description the inventor uses this language in reference to the figures 5 and 6 referred to :
“ Figure 5 shows a longitudinal section and figure 6
“ a horizontal section of another carriage arranged
3416 “ according to this part of my invention. The parts
“ marked A, B, C, D, E, F, G and H are similar to
“ the parts marked with the same letters in figures
“ 1, 2, 3 and 4, and therefore these parts need not
“ be again described. I I are compartments arranged on each side of the passage way H, and
“ are separated therefrom by partitions K, with
“ doors at L L; but for these partitions curtains
“ may be substituted if desired. M M are seats
“ or beds affixed in the chambers I I.”

Figures 3 and 4 referred to in the above quotation

show compartments separated from each other by transverse partitions, with beds arranged longitudinally on the sides of the car, the partitions being far enough apart for the beds or berths. There are two tiers of beds in each compartment, one over the other. Figures 5 and 6, which the inventor says show a car arranged according to the part of his invention shown in figures 3 and 4, show the transverse partitions somewhat nearer together than in figures 3 and 4, but he designates by the letters M M the seats or beds affixed in the chambers or compartments I I, from which I understand that the inventor designed that the compartments between the fixed partitions were to be adapted for use as seats for the passengers by day and for beds for the passengers by night, and that any person who should make a car in accordance with the description of this part of his invention included within the drawings figures 3 and 4, or 5 and 6, would locate the partitions at such a distance apart that the compartments could be used for beds if desired.

If the Court shall construe the first claim of said Woodruff reissue as being broadly for the combination in the ordinary long passenger railway car of a series of seats of any construction and operation, arranged in pairs transversely on each side of the central passageway, with diaphragms or partitions between each pairs of transverse seats of any construction and operation whatever, at such distance apart as to permit of berths of any construction and operation between these diaphragms or partitions, then said Leroy English patent shows and describes the combination set forth in said first claim of said reissued patent, for said Leroy patent shows and describes a passenger railway car having a central passageway, as in the Woodruff construction, with transverse seats each side of said central passageway, with diaphragms or partitions between the seats at such a distance apart as to permit of berths between these diaphragms or partitions, as previously more fully pointed out by me.

- 3421 If, on the other hand, the Court shall construe said first claim of the Woodruff reissue as to be for a passenger railway car, having the combination of a series of seats substantially such as are shown in the Woodruff reissued patent, arranged in pairs transversely on each side of a central passageway with diaphragms or partitions between each pair of transverse seats, constructed substantially as is shown in the Woodruff reissued patent, at such a distance apart as to permit of berths of the construction and operation shown in the Woodruff reissue between these diaphragms or partitions, then I am of the opinion that said Leroy English Patent does not show or describe the combination of all the parts or elements set forth in said first claim of the Woodruff reissue.

Q. 44. Please compare the construction of what you have termed the Springfield Car, with the alleged invention embodied in complainants' Exhibit No. 1 and referred to in the 1st and 2d claims thereof, and say whether in your opinion the said Springfield Car contains the said alleged inventions, giving your reasons for any opinion you may express?

- A. I have made the comparison required by the question. If the first claim of the Woodruff reissue should receive the broad construction referred to by me in answer to questions 41 and 43, then I am of the opinion that said Springfield Car referred to in the question does contain the combination of parts set forth in said first claim of the Woodruff reissue.
- 3424 My reasons for this opinion are as follows: Said Springfield car is a railway car containing the combination of a series of seats arranged transversely in pairs on each end of a central passageway, substantially the same as is shown in the Woodruff reissued patent, with diaphragms or partitions between each pair of transverse seats, substantially as described in the Woodruff reissue, at such a distance apart as to permit of berths between these diaphragms or partitions. The partitions in said Springfield Car extend from the floor to the ceiling and extend from the

walls of the car to the central passageway. The 3425
transverse seats are arranged on each side of said
partitions, back to back, so that persons sitting in
the seats face each other.

If on the other hand said first claim of the Wood-
ruff reissue shall be construed by the Court so as
to receive the restricted construction to which I
have referred in my answer to Questions 41 and 43,
then I am of the opinion that said Springfield Car
does not contain the combination of parts or ele-
ments set forth in said claim. 3426

In comparing the construction of said Springfield
Car with the alleged invention embraced in the sec-
ond claim of Complainants' Exhibit No. 1, if the
Court shall construe said claim broadly as specified
by me in answer to the 41st question, then I am of
the opinion that said Springfield Car referred to in
the question does contain the combination of parts
set forth in said second claim of the Woodruff re-
issue.

My reasons for this opinion are as follows: 3427

Said Springfield Car, in addition to the parts re-
ferred to by me and the construction which I have
described when referring to this car in this answer,
contains also a back cushion, which is attached to
the partition on each side of the compartment, and
so that the frame which supports the back cushion
by day may form also the partition between the
lower couches by night, as described in the Wood-
ruff reissue. It is true that in the Springfield car
the back cushions of the seats are not removable, 3428
but they are so connected with the back frame of
the transverse seats that they may form the back
cushions by day as effectually as in the Woodruff
construction, and they do not prevent the partition
from separating the lower couches by night.

The Springfield Car, as I have said before, contains
an arrangement of back frames and transverse seats
on each side of a central passageway with parti-
tions between the transverse seats.

If the Court, however, should construe the said

3429 second claim in the restricted form which I have specified in answer to the 41st question, then I am of the opinion that said Springfield Car does not contain the arrangement of parts or elements set forth in said second claim of Complainants' Exhibit No. 1.

Adjourned to to-morrow, March 31st, 1882, at 9:30 o'clock A. M.

NEW YORK, March 31st, 1882.

3430 Met pursuant to adjournment, Counsel appearing as before.

WM. C. HICKS' EXAMINATION CONTINUED.

Q. 45. Please compare the devices of what you have termed the Stephenson Car with the alleged invention embodied in Complainants' Exhibit No. 1, and referred to in the first three claims thereof, and say whether in your opinion the said Stephenson Car contains the said alleged inventions, giving your
3431 reasons for any opinions you may express?

A. I have made the comparison required by the question. If the Court shall construe each of said three claims referred to in the question broadly as specified by me when referring to said claims in answer to question 41, then I am of the opinion that said Stephenson Car referred to in the question, does contain the combinations of parts and elements set forth in each of said first three claims of said reissued patent. My reasons are as follows: Said
3432 Stephenson Car contains the combination of parts and elements of said first claim of the Woodruff reissue, because, like the Woodruff construction, it is a passenger railway car, having a central passageway running through the entire length of the car, and also having in it the combination of a series of seats arranged in pairs transversely on each side of a central passageway substantially as in the Woodruff construction, the transverse seats being arranged back to back so that the passengers sit facing each other the same as in the Woodruff construction.

Said Stephenson Car also contains diaphragms or partitions between each pair of transverse seats, substantially the same as in the Woodruff construction, at such a distance apart as to permit of berths between these diaphragms or partitions, substantially the same as in the Woodruff construction. If, however, on the other hand, the Court shall give to the said first claim the limited construction mentioned by me in answer to the said 41st question, then I am of the opinion that said Stephenson Car does not contain the combination of parts or elements set forth in said first claim of the Woodruff reissue, for the following reasons :

The said Stephenson Car has no means as in the Woodruff construction for making up a lower depressed berth; on the contrary the lower berth is made up at the height from the floor of the seat, as used by day, and for that purpose the seat cushions are carried forward towards the centre of the compartment and rest near the wall of the car on a ledge, and near the aisle of the car on a bar extending from seat to seat, while the cushions which support the backs of the passengers by day are lowered to the level of the seat cushions to complete the lower berth, whereas in the Woodruff construction the backs of the seats are carried up and supported on hinges to form a middle berth. In the Stephenson construction there are no fixed frames, *i i i i*, as in the Woodruff reissue, which are essential for the purpose of making up his lower berth, and no links, *k k*, nor seats, *j j*, provided with legs and combined with the fixed frames *i i i i*, as in the Woodruff construction.

My reasons why the Stephenson Car mentioned in the question contains the combination of parts or elements set forth in the second claim of said Woodruff reissue, construed broadly as referred to by me in my answer to the 41st question, are as follows: The said Stephenson Car, in addition to the central passageway and the transverse seats placed back to back and separated by partitions, all as in the Wood-

- 3437 ruff construction substantially, as I have before stated in this answer, contains the arrangement of the back frames of said transverse seats so that the frame which supports the back cushion by day may form also the partition between the lower couches by night. The said back cushions are so arranged in reference to the back frames that they are separable from said back frames and can be laid down to form the lower couch, leaving the partitions to separate two lower berths by night, while they support the backs of the passengers sitting face to face by day, as in the Woodruff construction. If, however, the Court shall give to the said second claim the limited construction which I have specified in my answer to said 41st question, then I am of the opinion that said Stephenson Car referred to in the question does not contain the arrangement of parts or elements set forth in said second claim of the Woodruff reissue, for the following reasons: Although said Stephenson Car has a central passage-
- 3439 way with transverse seats on each side of the same, and diaphragms or partitions between said seats at such a distance apart as to permit of berths between them, and with back frames which support the back cushions by day and separate the lower couches by night, as in the Woodruff construction, said back cushions are not hinged to the back frames and the back frames do not support the back cushions by the arrangements shown in the Woodruff reissue. The transverse
- 3440 seats of the Stephenson Car are not such transverse seats as are shown in the Woodruff construction, as I have before stated in this answer, and the back cushions do not form a part of a middle berth as in the Woodruff construction, but on the contrary, are laid down to form a part of another or a lower berth. The back cushions arranged as in the Woodruff reissue could not be used for the lower berth, neither could the back cushions of the Stephenson Car as arranged be used to form a middle or upper berth.

My reasons why said Stephenson car, referred to 3441
in the question, does contain the combination of
parts or elements set forth in the third claim of said
Woodruff reissue, under the broad construction specified by me in answer to question 41, are as follows :

Said Stephenson Car, as in the Woodruff construction, contains the combination of a set of transverse seats, supporting back frames and removable back cushions, by which the proper length can be given to the couch at night and the proper support for the 3442
passengers' backs by day, as in the Woodruff construction. The transverse seats are so placed that the passengers sit facing each other, as in the Woodruff construction; the back frames support the separable back cushions by day, and said separable back cushions are laid down to form a couch by night. As I have fully described the construction of these parts of the Stephenson Car, I need not again repeat them.

If, however, the said third claim of the Woodruff 3443
reissue shall receive from the Court the limited construction referred to by me in my answer to the 41st question, then the Stephenson Car does not, in my opinion, contain the combination of parts or elements set forth in said third claim, for the separable back cushions of the Stephenson Car are not, in my opinion, the equivalents of the movable back cushions shown in the Woodruff reissue; they are not equivalent back cushions, for they are not constructed with hinges to the partitions, are not continually attached 3444
to the back frames, are not supported by the back frames when used for a couch, are not in any manner used for a middle or upper couch, as in the Woodruff construction, but on the contrary are used in connection with the seat cushions for making up a lower berth.

As I have said before, the transverse seat cushions are not frames provided with legs and links combining them with fixed cushioned frames so that they may swing downward to form a depressed berth in

3445 connection with said fixed frames shown in the Woodruff reissue.

Q. 46. Referring now to complainants' Exhibit No. 2, the Cobb patent, state whether or not in your opinion from the contents thereof, any person skilled in the mechanic arts to which that patent refers, could make car seats and couches according to said contents, giving your reasons for any opinions you may express?

A. I think that a person skilled in the art could
3446 not, by following the description and drawings, make seats and couches according to said contents. The specification and drawings are contradictory and the drawings also are contradictory one with the other. For instance, the horizontal framed seat portion A¹ is described in the description of the specification as being provided at its ends with horizontal timbers B, secured below the ends of its frame and resting on horizontal longitudinal rails or ledges C projecting from them on the inner sides of the car
3447 and the side of a planking running along the longitudinal passageway through the car. This described construction is contradictory to the drawing of figure 2. Again, the description states by sliding these lower portions on the projections C C, at their ends, toward each other, until they meet at a point midway between the partitions D, and causing the ends of the frame works of the backs A² to rest on horizontal ledges E, secured to the partitions D, the two
3448 seats are converted into a convenient and comfortable sleeping berth for two persons.

Towards the end of the description, the specification says, the horizontal portions A¹ of the seats below are then slid towards each other over the ways, ledges or projections C, and brought together, and the backs A² are allowed to fall and to rest upon the ledges or projections E. This is contradictory to the construction shown in Figs. 1 and 3.

Figure 1 is said to be a longitudinal section of the interior of a portion of the side of a railroad car,

and figure 2 is a cross section. Figure 3 is a side elevation of the two seats and platforms, &c. Similar letters in the several figures refer to corresponding parts. 3449

Now, in figure 2, the projections B B are represented underneath the ends of A¹, and extend to the floor of the car, whereas in figure 1 projection B, as it is called, rests on the way C, and in figure 3, B and C together are shown slid to the center of the compartment, apparently together as one piece, but in drawing figure 2, the ways C C, are represented as behind the projection B, or between it and the side of the car, as though the ways C C, were attached to the floor so that the seat A, with the projections B B could slide over the ways C C when carried towards the center of the compartment. 3450

In figure 2 the letter E, on the side towards the aisle is placed on the piece marked L, in figure 1; but on the side of figure 2, letter E, which is said to be a ledge on the inner sides of the car, is placed between the projections B B, under the seat frame A¹. 3451

There could be no ledge in the position designated by letter E projecting from the inner side of the car, for the projection B intervenes between it and the side of the car. Now taking the construction shown in figure 2, and supposing that the projections B B rest upon the floor; and that A¹, with the projections B B, should be slid towards the center of the compartment, no part would slide upon a ledge E, although the parts could slide over the ways C C, but in that case the representations in figures 1 and 3 would be erroneous and disagree with the representation in figure 2. 3452

Q. 47. Ignoring the contradictions that you have referred to in your last answer, state what, if anything, you can guess out of the contents of this Cobb patent as the alleged invention therein contained and referred to in the first claim thereof, and compare Complainants' Exhibit Defendants' Car with

3453 said alleged invention, and state whether or not the said defendants' car contains the said alleged invention, giving your reasons for any opinions you may express ?

A. Studying and examining the drawings of the Cobb patent and ignoring some of the letters upon the parts and the erroneous descriptions in the specification, I am enabled to make out a set of seats and couches in a railroad car having seats hinged to backs, each of the seats being provided
 3454 with a lower portion or frame B, resting on rails C C, and attached to them one near the wall and the other near the aisle of the car, so that the seats with the rails may be slid forward on the floor of the car to the centre of the compartment, and so that the hinged backs may be laid down upon ledges, one near the aisle of the car and one near the side of the car, so as to enable them to be used as a double sleeping couch, and so that seats may be formed with backs when said seats are slid away
 3455 from each other towards the partitions of the compartments.

The first claim of the patent is as follows :

“ Arranging the lower portions, A¹, and hinged
 “ backs A² of the seats A on the rails and ledges
 “ C E, so as to either enable them to be used as a
 “ double sleeping coach (couch) or as a seat in the
 “ manner before described.”

On comparing the arrangement of the parts and elements of the first claim of the Cobb patent with
 3456 the complainants' Exhibit Defendants' Car, I am of the opinion that said Defendants' Car does not contain the arrangement of parts and elements set forth in said first claim, for the following reasons : The said Defendants' Car does not contain the lower portions referred to in said claim, which extend down from the seat cushion A¹, to the floor of the car, including the rails. C C, as set forth in the first claim of the Cobb patent. Said Defendants' Car does contain a hinged back, substantially equivalent to the hinged back referred to and shown in the Cobb pa-

tent, and when laid down in a horizontal position for 3457
 a couch, said backs rest upon supports on each end
 of the seat, in a manner similar to that shown in
 the Cobb patent; but the construction and mode of
 operation of the hinged seat cushion and back
 cushion of the Defendants' Car is very different
 from the construction and mode of operation of the
 seats with attached lower portions resting on the
 floor, and hinged backs of the Cobb arrangement.
 The seat cushion of the Defendants' Car is precisely
 alike the back cushion, and the two are hinged 3458
 together, so that the seat cushion when carried
 towards the center of the compartment for making
 up a berth does not rest upon the floor of the car,
 but being on a level with the seat as used in the day
 time rests upon a shoulder near the wall of the car
 extending from seat to seat, while on the side near
 the aisle of the car said seat has no support.

In my opinion the principal characteristic feature
 of the Cobb arrangement for seats and couches is
 the construction and operation of the lower portions 3459
 B and C of A¹ attached fixedly to A¹, and these
 parts so connected as to make a sort of enclosure,
 having a top cushioned on its upper side.

This inclosure is formed by the portions B B as will
 be seen on looking at figures 1 and 3, which not
 only make the ends of the inclosure parallel with
 the sides of the car and the aisle of the car, but
 are united together across the front of the enclosure
 facing the passageway between the seats.

This is represented in figures 1 and 3 by the half 3460
 circle and vertical short line above it, extending up
 to the bottom of A¹, so that the part called B ex-
 tends around three sides of a parallelogram. Directly
 under the parts B B are the ways C C, which are
 like the runners of a sleigh, one at each seat end.
 These runners are attached permanently to the box-
 like enclosure. As I said before, A¹ is permanently
 attached to the frame B and makes a cover to the
 enclosure, and on the top of the box is a cushion.
 This enclosed box with a cushioned top is pushed

3461 forward on the runners along the floor of the car to the center of the compartment to form the couch, and the ways or runners support the seat and lower portions on the floor in all positions.

The Defendants' Car has no such construction or arrangement. It has simply a cushioned seat, which, when used as a part of a couch, rests upon a ledge or projection on the side of the car, at the height of the bottom of the seat, which in my opinion is not an equivalent supporting mechanism
3462 to that shown in the Cobb drawings and patent, and has no support on the aisle side; neither is said support in the Defendants' Car for the end of the seat cushions at the wall of the car, when used for a couch, equivalent to one of the ways, C, shown near the side of the car under the enclosure B and the seat A¹.

Adjourned to to-morrow, April 1, 1882, at 10 o'clock A. M.

3463

— — —
NEW YORK, April 1, 1882.

Met pursuant to adjournment.

Counsel appearing as before.

WM. C. HICKS' EXAMINATION CONTINUED:

Q. 48. Please state what you understand to be the alleged invention described and shown in the Defendants' Exhibit Original Wheeler '59 Patent, confining your answer particularly to what is embodied
3464 in said patent, and referred to in the second and third claims thereof?

A. The said Wheeler patent describes as part of the invention of that patent the peculiar construction of partitions in combination with an outer sliding panel, whereby the partitions which form the framework or stiles are permanent, while the panels are movable, and are made to raise up and fasten by spring catches, or other suitable devices, serving as a support when raised for an upper berth, and as head and foot-boards to

separate the couches on the side towards the aisle, 3465
these panels allowing free ventilation under the
lower berths at night by being constructed in such
a manner that when they are raised up they leave
an opening between the sliding panels and the floor,
so that air may circulate under the lower couches.
These sliding panels are marked *b* in the drawings
of the patent, and are so arranged in the frame-
work or stiles that they complete the partitions be-
tween the seats, or in other words, they are so ar-
ranged that if they were removed entirely from the 3466
framework marked *B* in the drawings, there would
be an opening through between the lower berths at
night and between the backs of the seats by
day.

I understand this part of the said invention to
be embraced in the second claim of the said patent,
which is as follows:

“The short open stationary partitions *BB*, in com-
bination with sliding panels *b b*, which, when
elevated, serve as head and foot-boards, and allow 3467
ventilation under and above the berth during
night time, and when lowered during day time
afford more room to the upper portion of the body
of passengers as they pass through the aisle of
the car, substantially as set forth.”

The said Wheeler patent describes as part of
the invention of that patent the combination
of sliding-blinds with that part of the partitions
which extend from the floor to the roof of the car,
so arranged as to be slid down at night to admit a 3468
free circulation of air above the upper couches, and
to serve as head and foot-boards for those upper
couches at night, while they permit a free circula-
tion of air above the heads of the sitting passen-
gers in the daytime, by being slid upwards towards
the top of the car. These blinds are not removable
from the partitions, nor can they be concealed from
sight during the day, as can the sliding-panels, *b*,
but are operated by changing their positions in rela-
tion to the fixed partitions, *a*, and partitions, *c c*.

3469 These sliding closed blinds, *C C*, are described as arranged to operate and serve as foot and head-boards for the upper berths by night, and for allowing ventilation above the upper berths at night, and below the upper berths by day, so that the partitions near the walls of the car are never entirely closed, and there is never an entire separation between the upper berths near the sides of the car.

I understand this part of said invention to be embraced in the third claim of the said Wheeler patent, which is as follows :

“ The short sliding closed blinds *C C*, arranged to
“ operate as described, and serve as foot and head
“ boards, and allowing ventilation above and below
“ the upper berth, in combination with the upper
“ berths, *E*, and partitions *c c*, substantially as set
“ forth.”

Q. 49. Compare the car, Complainants' Exhibit Defendants' Car, with the alleged invention described and shown in the said Exhibit Original Wheeler '59
3471 Patent, and referred to in the second and third claims thereof, and state whether or not in your opinion the said Defendants' Car contains the said alleged inventions, or either of them, giving your reasons for any opinion you may express?

A. I have made the comparison required by the question. In my opinion said Defendants' Car does not contain the alleged invention set forth in either the second or the third claims of said Wheeler patent. My reasons why said defendants' car does not
3472 contain the alleged invention set forth in the said second claim of the Wheeler patent are as follows:

Said Defendants' Car does not contain any open stationary partitions at all, nor any sliding panels like those described in said Wheeler patent, nor any equivalents for said panels either in combination with stationary partitions or otherwise. The said Defendants' Car contains short partitions extending from the floor between the transverse seats a little higher than the cushioned back frames of the seats, but these partitions are not like the Wheeler parti-

tions, for instead of being open they are solid partitions, and instead of being short in the sense as I understand the word as used in the Wheeler patent, they are long and extend to the floor, a construction which would render the Wheeler combination inoperative. There are movable pieces in the Defendants' Car, which resting upon the upper ends of the widest part of the partitions, extend up above the height of the upper berths and form head and foot-boards for a portion of these upper berths, but these sliding pieces are not the equivalent of the sliding panels, *b, b*, because they are never elevated as are the Wheeler panels, never serve as head and foot-boards of the lower couch, and do not allow ventilation under the lower berth at night-time, and they are never lowered, as are the panels in the Wheeler construction, into the short stationary partitions. 3473 3474

These movable parts of the partitions in the defendants' car are entirely separable from the partitions, and are slid into place transversely across the car, and when not in use are stowed away in some part of the car and are never in combination with the partitions excepting at night, and at that time their combination and arrangement is entirely different from the combination and arrangement of the partitions, *B, B*, and sliding panels, *b, b*, of the Wheeler patent. Moreover, the movable partitions of the Defendants' Car are not used to support the upper berth, and never leave an opening under the lower berth for the circulation of air through the openings in the partitions. 3475 3476

My reasons why the said Defendants' Car does not contain the alleged invention embraced in the third claim of the Wheeler patent, are as follows:

The said Defendants' Car does not contain the short sliding closed blinds, *C, C*, of the Wheeler patent in any form, nor any equivalent therefor, nor anything that operates as described in said patent to serve as foot and head-boards, and to allow ventilation above and below the

3477 upper berth in combination with the upper berth, E, and partitions, C, C, described in the third claim of the Wheeler patent.

As I have before said, the said Defendants' Car does contain movable pieces, which are entirely separated from the partitions during the day time and are stowed away in some part of the car in the day time ; but they are not the blinds, C, C, of the Wheeler patent, and are not equivalent for them ;
3478 titions near the side of the car and extending from the floor to the ceiling of the car in the manner that the blinds are in the Wheeler construction, nor in any manner which can give them the mode of operation described in the Wheeler patent and set forth in the third claim thereof. Said movable pieces of the Defendants' Car are not combined with the parti-
3479 tions by day at all in any manner, but are entirely removed, whereas the Wheeler blinds always remain in connection with the partitions, and their operation is dependent upon their position in those partitions.

Q. 50. Please compare the contents of Defendants' Exhibit Original Wheeler '59 Patent with the contents of the Complainants' Exhibit No. 3, so far as the subject matter of the first claim is concerned, and state what changes, if any, have been made in the latter from the former ?

A. I have made the comparison required by the question.

3480 As I have said before, the inventions described in the original patent, as I understand them, consist of combinations of specific devices. In the second claim of the original patent is a peculiar combination of open stationary partitions and sliding panels. In the third claim of the said original patent of Wheeler the invention consists, as I understand it, in the combination of short sliding closed blinds, with partitions near the side of the car, extending from the floor to the roof, said blinds never being separable from the partitions.

In the reissued Wheeler patent, on the contrary, 3481
so far as relates to the first claim thereof, the description of the panels, which slide in the open work partitions, is enlarged to movable diaphragms or partitions, which aid in dividing the car into compartments when the berths are arranged for sleeping, and which can be moved out of the way to afford ventilation or otherwise accommodate the passengers during the day, substantially as described.

In the specification of the reissued patent what were called sliding closed blinds in the original 3482
patent, are called movable partitions, and it is stated that the essence of this branch of the improvement consists in the employment of movable diaphragms or partitions in forming the compartments, as contradistinguished from the use of permanent partitions for this purpose, or the entire absence of partitions, from which I understand that the invention sought to be claimed in the reissued patent is for movable diaphragms or partitions of any form, the moving of which from between the seats of a car would afford 3483
ventilation and otherwise accommodate the passengers, although the drawings of the reissued patent are the same as the original, showing the same parts operating in the same way as in the original, and the specification of the reissue, in so far as it refers to the particular devices of the drawings, describes those devices in their operation and combination in substance as in the original patent.

Q. 51. Compare the car Complainants' Exhibit Defendants' Car with the alleged invention described 3484
and shown in Complainants' Exhibit No. 3, and referred to in the first claim thereof, and state whether or not, in your opinion, the said defendants' car contains the said alleged invention, giving your reasons for any opinion you may express?

A. I have made the comparison required by the question. If the Court shall construe said first claim of the Wheeler reissue to be for a combination of the movable diaphragms or partitions, constructed substantially as shown in the drawings of the reissue

3485 and having substantially the mode of operation in relation to the partitions between the compartments shown in said drawing and described in the specification, and producing substantially the result which those devices are shown and described to produce, then I am of the opinion that said defendants' car does not contain the invention set forth in said first claim of the reissued Wheeler patent, for the reasons that said Defendants' Car does not contain the devices described and shown in the drawings of the
3486 reissue nor equivalent devices. As I have said before, the movable partitions in the Defendants' Car do not slide within the frame work of the partitions between the seats, are never raised up from the inside of said partitions and are never lowered into said partitions as in the Wheeler construction, but on the contrary are entirely removed by day and simply rest on the top of the the seat partitions by night. They do not sustain the upper berth as do the Wheeler
3487 sliding partitions; nor does the Defendants' Car contain any movable blinds or immovable blinds, nor any equivalent construction connected with the partitions in any manner, or having any mode of operation such as is described and shown in the drawings of the Wheeler reissue.

If on the contrary, however, the Court shall construe the first claim of the Wheeler reissue to be for any movable diaphragms or partitions which aid in dividing the car into compartments when the
3488 berths are arranged for sleeping, and which can be moved out of the way in any manner to afford ventilation and otherwise accomodate the passengers during the day, no matter how said movable partitions are constructed or operate, or how they are combined with the car, then I am of the opinion that the Defendants' Car contains the said alleged invention of the first claim of the Wheeler reissue.

Adjourned to Monday, April 3d, 1882, at 10 o'clock A. M.

NEW YORK, April 3d, 1882. 3489

Met pursuant to adjournment.

Counsel appearing as before.

WM. C. HICKS' EXAMINATION CONTINUED:

Q. 52. Please compare the devices of Defendants' Exhibits, McGraw 1838 Patent, Warren 1850 Patent and Buell 1852 Patent; with what is shown and described in Complainants' Exhibit No. 3, pointing out wherein the movable head and foot-boards in relation to the seats or couches of the first-named exhibits resemble or differ from the movable diaphragms or partitions, and their relation to the couches as shown and described in said Exhibit No. 3? 3490

A. I have made the comparison required by the question. In said McGraw patent is described a sofa bedstead, the sofa having hollow arms which conceal head and foot-boards during the day time and from each of which arms is drawn out in a horizontal direction a sliding panel A, when the seat of the sofa is extended or drawn out to form a bed. Letter H of the drawings represents this sliding seat and letter A represents the sliding head or foot-boards which move horizontally, whereas the sliding panel described in the Wheeler reissue slides out from the hollow partitions vertically. The panels in both cases are concealed within partitions and are slid out and in to form head and foot-boards for couches, or to conceal the panels during the day. 3491

The McGraw panel slides out horizontally from within the arms or ends of the sofa bedstead, and the Wheeler panel slides out vertically from within hollow partitions to form head and foot-boards for couches. 3492

In comparing the Warren patent, referred to in the question, with what is shown and described in the Wheeler reissue, I find that said Warren patent shows and describes a sofa bedstead having horizontally sliding head and foot boards drawn out from

- 3493 within the arms or ends of the sofa when the seat is pulled out, as shown in figure 3, to form a bed. These head and foot boards are marked *j*. Like the head and foot boards of the Wheeler reissue, the head and foot boards of the Warren patent are drawn out for use at night and concealed within their enclosures by day. Both are movable—the head and foot boards of Wheeler in a vertical direction, and the head and foot boards of the Warren construction in a horizontal direction.
- 3494 In comparing what is shown and described in the Buell patent, referred to in the question, with what is shown and described in the Wheeler reissue, I find that said Buell patent shows and describes car seats and couches, the seats constructed to stand transversely of the car, with their backs between the seats made hollow, and concealing, or nearly concealing within them, movable diaphragms or partitions, constructed and operating substantially like the partitions and panels or movable diaphragms shown and described in the Wheeler reissue. They are arranged to slide vertically up and down in the seat backs and to aid in ventilation, as do the Wheeler panels. They also aid in dividing the car into compartments, as in the Wheeler construction. As in the Wheeler construction, also, the movable panel or diaphragm near the aisle in the Buell construction may be moved up and down independent of the panel near the side of the car, which may remain drawn up or fixed.
- 3496 Q. 53. Compare the devices of what you have termed the Richmond, Toledo and Fort Wayne Cars and the devices shown and described in Defendants' Exhibits, Woodruff '56, Patent No. 16,160; Harrington 1858 Patent; Creighton 1858 Patent; Luce & Morrison 1859 Patent; McNeill 1859 Patent No. 24,225, and Dirk's 1859 Patent, with the alleged invention described and shown in Complainants' Exhibit No. 3 and referred to in the first claim thereof, and say whether in your opinion each of said cars and exhibits contains

the said alleged invention, giving your reasons for 3497
any opinion you may express?

A. I have made the comparison required by the question. If the Court shall give to the first claim of the Wheeler reissue the broad construction specified by me in answer to question 51, then I am of the opinion that each and all of the cars and defendants' exhibits referred to in the question do contain the said alleged invention set forth in said 1st claim of the Wheeler reissue.

The said Richmond Car referred to in the question 3498
contains in my opinion the said alleged invention of said 1st claim, for the following reasons:

This Richmond Car contains movable head and foot boards attached to the ends of the lower berths and also to the fixed partitions which separate the couches one from the other. They are movable out of the way during the day, in relation to the fixed partitions between the couches as in the Wheeler construction, to aid in ventilating the car and otherwise accommodate the passengers. 3499

The said Toledo Car contains said alleged invention of said 1st claim, in my opinion, for the following reasons:

Said Toledo Car contains movable and sliding panels or diaphragms contained within the partitions between the compartments during the day, and raised up vertically from inside of them to separate between the couches at night. Said panels or diaphragms are wider and extend up higher than the outer panels in the Wheeler patent. The diaphragms of the Toledo Car separate the couches and aid in dividing the car into compartments, and can be moved out of the way in the day time to afford ventilation, as in the Wheeler reissue. 3500

The said Woodruff patent of 1856, No. 16,160, contains said alleged invention of said 1st claim, for the following reasons:

This Woodruff patent shows movable seats *m* and *n* arranged crosswise of the cars near the aisle, which may be turned to stand in a vertical direction

3501 and to form a panel in connection with the partition between the couches, and completing the separation between them, as in the Wheeler reissue.

These seats, when they are in a horizontal position, are on the opposite sides of the partitions, one on each side of each partition, and consist of two seat frames lying in the same plane, without legs and without supports at their front edges, they are pivoted in the partitions in such a manner that one may swing down to
3502 a horizontal position from the partition, and the other may swing up to a horizontal position from the partition, where they are held firmly for use as seats by stops near the central pivots.

When the seats are in position for day use, there are openings through the partition above and below the seats. Thus, it will be observed that the partitions of the compartments of the Woodruff patent referred to are provided with movable partitions or diaphragms which furnish ventilation by day and
3503 otherwise accommodate the passengers, as in the Wheeler reissue.

The said Harrington 1858 patent, in my opinion, contains said alleged invention of the said first claim for the following reasons:

The said Harrington patent contains the fixed partitions between the seats of the full width of the seats, with a narrower partition extending up to the roof of the car, as in the Wheeler construction, and the specification states: "This portion of the parti-
3504 "tion is constructed with a door or with blinds to "open at pleasure, for the purpose of ventilation, "corresponding with the head and feet of the "sleepers." This construction is substantially the construction described in the Wheeler reissue, and shown as one of the means of effecting ventilation by movable diaphragms or partitions which aid in dividing the car into compartments when the berths are arranged for sleeping.

The said Creighton 1858 patent in my opinion contains the said alleged invention of the first claim of the Wheeler reissue for the following reasons:

In said Creighton patent I find movable diaphragms attached to the ends of the upper berths in such a manner as to form movable partitions and divide the car into compartments, when the berths are made up and to act as head and foot boards for the passengers while sleeping in the couches, as in the Wheeler reissue. These diaphragms are hinged to one end of the berths only, and are folded up with the berths in the daytime so that they are concealed from view as in the Wheeler construction.

3505
3506

The said Luce & Morrison 1859 patent in my opinion contains the invention referred to in the first claim of said Wheeler reissue for the following reasons:

The said Luce and Morrison patent contains movable diaphragms or partitions which aid in dividing the car into compartments when the berths are arranged for sleeping, and which can be moved out of the way during the daytime. These movable diaphragms or partitions are the head and foot boards of the couches which are three in number, and they are turned down upon hinges onto the top of the berth before it is turned up against the partition running lengthwise of the car.

The said McNiell 1859 patent 24,225, in my opinion contains the invention referred to in the first claim of said Wheeler reissue, for the following reasons:

Said McNeill patent contains movable diaphragms or partitions, hinged to the side of the car so as to aid in dividing the car into compartments and to afford ventilation and otherwise accommodate the passengers.

3508

These hinged partitions are swung against the sides of the car out of the way during the day, and form the head and foot boards for the couches when they are placed at right angles to the sides of the car during the night.

The said Dirks 1859 patent in my opinion contains

3509 the invention referred to in the first claim of said Wheeler reissue, for the following reasons:

Said Dirks' patent contains movable diaphragms or partitions, which slide within the fixed partitions and are drawn out in a horizontal direction to aid in dividing the car into compartments, when the berths are arranged for sleeping, and which can be moved out of the way to afford ventilation and otherwise accommodate passengers in the day time. There are two of these slides in each partition, the lower
3510 one marked G, sustains the middle berth, and the upper one marked K, forms head and foot boards for the middle berth.

The Fort Wayne car, in my opinion, contains the invention referred to in the first claim of the said Wheeler reissue, for the following reasons:

It contains movable partitions or diaphragms, hinged to the wall of the car, one set above the backs of the seats and folded against the sides of the car during the day, and another set extending from
3511 the tops to the bottoms of the seat backs, also turned against the walls of the car during the day, and swung at right angles to the walls of the car, between the backs of the seats and between the berths at night. These movable diaphragms divide the car into compartments when the berths are arranged for sleeping, and can be moved out of the way to afford ventilation, and otherwise accommodate the passengers during the day.

If on the contrary, however, the Court shall give
3512 to the first claim of said Wheeler reissue the limited construction specified by me in my answer to the 51st question, then I am of the opinion that said cars and defendants' exhibits referred to in the question do not either of them contain the invention set forth in the said first claim of the Wheeler reissue.

Adjourned to to-morrow, April 4, 1882, at 10 o'clock A. M.

NEW YORK, April 4, 1882. 3513

Met pursuant to adjournment.

Counsel appearing as before.

WM. C. HICKS' EXAMINATION CONTINUED.

Q. 54. Please compare the specification and drawings of Defendants' Exhibit original Field and Pullman '65 patent with the specification and drawings of Complainants' Exhibit No. 4, and state what changes, if any, have been made in the latter from the former, restricting your answer to all those parts in each of said exhibits other than the devices for making and separating the lower berths? 3514

A. I have made the comparison required by the question. The drawings of the original patent of Field & Pullman, are substantially the same as the drawings of the reissued patent, Complainants' Exhibit No. 4, and the letters are the same, with the exception that in the reissue an additional letter M, has been put upon a part. The specification of the reissued patent, however, differs greatly from the specification of the original patent, in the following important particulars. 3515

In the specification of the original patent the only description of the construction and operation of the upper berth, and the mode of sustaining it and connecting it to the car, except the counterbalancing is in the following language, which I quote:

"The upper berth, A, is hinged at B to the side of the car. There is at each end of the berth a metallic suspender, C, which has a pin joint at each end and one near the middle. One end of each suspender is attached to front edge of berth, the other end to the roof, near corner of car. When the car is used as a day car, the front edge of the berth A is raised up to an angular position until the front side of it touches the roof of the car, * * * or the berths may be so constructed as to throw them back against the side of car into a perpendicular position." 3516

3517 In the specification of the reissued patent the description of the construction and operation of the upper berth and the mode of sustaining it and connecting it to the car, except the counter-balancing, is in the following language, which I quote:

“ The invention relates to the mode of arranging
“ and supporting the upper berths of a sleeping
“ car; * * * The outer side of the upper berth is
“ connected with the wall or side of the car in such
“ manner that the berth may be thrown up from
3518 “ the horizontal position which it occupies at night
“ into an inclined or vertical position, in order to
“ get it out of the way of the heads of the passen-
“ gers by day, its line of connection with the wall
“ of the car constituting the axis of motion up-
“ on which it turns as it is moved from the hori-
“ zontal to the upright position. The frame of this
“ upper berth encloses the mattress and bedding. It
“ is shown in the drawing as consisting of a box or
“ tray with sides, ends, and bottom, capable of
3519 “ containing a mattress wholly enclosed within it,
“ and this box or tray is attached to
“ the side of the car by its upper
“ edge. By thus locating the hinges, the berth is
“ made to occupy a lower position when horizontal
“ than if the hinges were at the lower edge of that
“ same side of the box, and, consequently, the berth
“ is so connected with the wall of the car as to be
“ more out of the way when turned up, thus leav-
“ ing more vertical space below it for the windows.
3520 “ Furthermore, the vacant space which would
“ otherwise exist between the side of the box and
“ the wall of the car is avoided. The back of the
“ box should be made inclined or shelving, as shown
“ in the drawing, so as to furnish still more room
“ underneath when the berth is in its upright or
“ day position.

“ For supporting the berth in its horizontal posi-
“ tion, suspending devices are used, the weight of
“ the berth, other than what is sustained directly
“ by the wall of the car, or incidentally by the

“ counter weights hereinafter mentioned, being 3521
 “ borne by these suspending devices which are at-
 “ tached to the car at points above the horizontal
 “ plane of the berth.

“ By thus supporting the berth, through the me-
 “ dium of suspending devices sustaining it from
 “ above, these devices can be so constructed as to be
 “ moved out of the way when the berth is turned
 “ up. In this respect the construction differs ma-
 “ terially from that in which the berth is supported
 “ from below by cleats or bolts attached to or enter- 3522
 “ ing permanent partitions arranged between the
 “ sections.

“ The preferred form of suspending devices is
 “ that shown in the drawing—viz, two jointed me-
 “ tallic straps, pivoted to the berth, one at each end
 “ near its inner front corner, the upper ends of the
 “ straps being pivoted near the upper corner of the
 “ car. The joint in these suspenders enables them
 “ to fold together behind the berth and out of the
 “ way and out of sight when the berth is turned up. 3523

* * * * *

“ In applying the invention the parts may be so
 “ constructed that in turning the upper berths up
 “ upon their hinges to get them out of the way of
 “ the heads of the passengers they may be raised
 “ up into a vertical position, directly against the
 “ wall of the car, or they may be so made as to oc-
 “ cupy an inclined position when turned up, as
 “ shown in the drawing. * * *

“ Referring to the drawing, the different parts 3524
 “ hereinbefore spoken of are represented by letters,
 “ as follows: A is an upper berth; B, one of the
 “ hinges, by which it is connected with the wall of
 “ the car; C, C, the jointed metallic suspenders for
 “ supporting the front part of the berth;”

In the original Field & Pullman patent no men-
 tion is made of a box or tray with sides, ends and
 bottom, capable of containing a mattress wholly en-
 closed within it, as being the construction of the
 frame of the upper berth, neither is such construc-

3525 tion shown in either the drawing of the original or the reissued patents; neither does the specification of the original patent describe the back of the box as being made inclined or shelving, so as to furnish more room underneath when the berth is in its upright position.

In the original patent the suspending devices are described as having a peculiar specific construction, having a pin-joint at each end and one near the middle, one end attached to the front edge of the
3526 berth, the other end to the roof, near the corner of the car; whereas in the reissue the description is so broadened as to include therein devices for supporting the berth in a horizontal position, no matter how they are constructed or operate, provided they support such berth by being attached to the car at some point above the horizontal plane of the berth and so that they can be moved out of the way when the berth is turned up, as distinguished from devices for supporting the berth from below; jointed
3527 metallic straps being described as only one, and that a preferred construction of such supporting devices.

Adjourned to to-morrow, April 5, 1882, at 10 o'clock A. M.

NEW YORK, April 5th, 1882.

Met pursuant to adjournment, counsel appearing
3528 as before.

WILLIAM C. HICKS, EXAMINATION CONTINUED:

The only description of the construction and operation of the means for counter-balancing the upper berths, and their relation to the same in the original Field and Pullman Patent, is in the following language which I quote from the specification of that patent: "The berths are counter-balanced by "weights D, running on rods L to steady them, and "the cords E working over pulleys, so that the berths

“move easily up or down by hand. These weights D 3529
 “are inclosed in a closet in centre of car, and wire
 “rope or other cords pass over pulleys to each
 “berth;”

The drawing of the original Field & Pullman Patent shows one counter-balancing weight for each berth, with cords extending from each end of the berth over pulleys, near the corner where the roof and sides of the car join, and these cords are attached to the weight D.

In the reissued patent the statement is made in the 3530 specification that these counter-weights, incidentally in connection with the suspending devices and the wall of the car, support the weight of the berth, and that “By the employment of counterbalances the handling of the berth is facilitated, the berth, when counter-balanced, being more easily raised to its day position, and lowered to its position at night with less shock and strain.

“Counterbalances are also useful to prevent the
 “berth from falling down, if the spring catch relied 3531
 “upon to hold it up in its day position breaks or
 “becomes disengaged.

“In the drawing, the berth is shown as counter-balanced by weights which, in order to steady them, are made to move up and down on vertical rods, and which are connected with the front part of the berth by means of cords working over properly located pulleys. These weights upon either side of the car may be inclosed in a closet in the center of the car, with wire rope or other 3532
 “cords leading over suitable pulleys to each berth.
 “* * * D D, weights for counterbalancing the
 “berth, running on the rods L to steady them, and
 “connected with the berth by cords E, E.”

In the reissued patent, these counter-balancing arrangements referred to in the original patent, in the part of the description I have quoted, which simply refers to the construction and arrangement of counterbalancing devices without specifying that they are important, and constitute a part of the in-

3533 vention therein described, are made an important part of the invention. The description of their operation as regards the manipulation of the upper berth, and their relation to a spring catch, so as to prevent the berth from falling down, which might result if the spring catch alone were relied upon, is not found in the original patent.

In the original patent of Field and Pullman, the only reference made to a recess is as follows, when the berth is an angular position: “it is entirely out of
3534 “the way, and the mattresses and bedding of both “upper and lower berths are shut out of sight “into the triangular recess in the corner of car.”

In the reissued patent I find the following description of recesses.

“Parting strips, stationary, and of such size and “shape as may be required by the degree of inclination to be given to the berths, project inward from “the upper part of the walls of the car, which, with “the roof and sides of the car, form recesses into
3535 “which the berths shut. These parting strips, “which thus aid in forming the recesses that receive the upturned berths, do not extend far “enough into the car to interfere with the free circulation of the air through the car by day, as “would necessarily be the case with permanent “partitions extending from the roof of the car “down to the seats.

“The difference between these recesses thus formed “against the side of the car, at the upper part thereof
3536 “and recesses formed wholly in the roof of the car is “that with the latter the berth must be raised up bodily in changing it from its night to its day position, “the entire weight of the berth being lifted up several feet into the roof, while with the former the “berth may be simply turned up into its recess, “moving upon a fixed axis of motion, and occupying at last substantially an upright rather than a “horizontal position.

“Portions of the bed clothing, according to the “size of the space enclosed by each upturned berth,

“ may be stowed away in the day-time in the recess 3537
 “ behind such berth. The front side of the berth
 “ shuts tightly against the roof of the car, thus
 “ forming with the recess a close closet in which the
 “ bedding placed therein will be protected from dust
 “ and cinders and wholly concealed from observa-
 “ tion.

* * * * *

“ M are the parting strips, which, in connection
 “ with the wall and the roof, form the recess, which
 “ receives the berth when turned up.” 3538

No parting strips are described in any manner for
 any purpose in the original patent. The drawing
 of the original patent shows in the left hand upper
 corner of figure 1 the berth raised in an inclined po-
 sition but no strips of any kind to form with the
 wall and the roof of the car a recess are shown. In
 the right-hand upper portion of figure 1, there is
 shown a line at the roof running to the wall of the
 car, and another line down to the berth which rep-
 resent merely the roof and side of the car, and a 3539
 diagonal line which might represent the inner edge
 of the movable head board J. There is also
 another diagonal line dotted at the front of
 the said drawing. Whether the triangular spaces
 bounded by the full lines representing the roof and
 side of the car and what might be one edge of the
 head board J, and bounded by the dotted diagonal
 line, and the full lines representing the roof and
 side of the car in the front of the drawing, are in-
 tended to be represented as being filled up by any- 3540
 thing, I am unable to determine from the original
 patent, and with what material they are to be filled
 up, if at all, is not apparent from the original pa-
 tent. In my opinion, therefore, there is no certain
 foundation in the original patent for the description
 of the stationary parting strips found in the reissued
 patent from which I have quoted above.

In the original Field & Pullman patent the only
 reference to what is called a movable partition in
 the reissued patent is in the following language:—

- 3541 “ J is a movable head-board, slipped in when the
“ berth is made up, to fill up the balance of the
“ space each end of berth, and rests on the top
“ of the sliding head-boards I when I is raised up.”

In the reissued patent I find the following language:—

- “ A single movable partition between each two
“ adjoining upper berths, the same serving as a
“ head-board to the one berth, and a foot-board to
“ the other, is used in dividing the upper
3542 “ part of the car into compartments at
“ night, such partition being separate from,
“ and therefore adjustable independently of,
“ the berths. By using for this purpose a movable
“ piece that can be taken out of the way in the
“ daytime the upper part of the car is left unob-
“ structed when arranged for day use, and by em-
“ ploying for this purpose a partition in one piece
“ and detached from the berths, there results greater
“ convenience and simplicity of construction than
3543 “ exists in those structures in which the parti-
“ tion is composed of more pieces than one, each
“ separately adjustable, or those in which the parti-
“ tions are permanently attached to the berths so
“ as to be taken down and set up with them. This
“ movable partition between the upper berths is
“ shown in the drawing as a piece which is slipped
“ in from the aisle as the berths are made up, and
“ it rests upon the top of the vertically sliding
“ panel that completes the partition between the
3544 “ corresponding lower couches. * * * J is the
“ movable head board between the upper berths,”

In both the original and reissued patents the movable head-board J, slipped in when the berth is made up, is shown in the drawings, but no catches whatever or other contrivances are shown to hold it in place and prevent it from swinging over, sliding out, falling down and being disconnected. Without some such contrivance such a head-board might fall down on the heads of the passengers and could not properly serve its purpose. It evi-

dently was not regarded as a part of the invention of the original patent, and its mode of operation and importance are very much magnified and enlarged in the reissued specification. 3545

As I have said before, in the original Field & Pullman patent no reference whatever is made to a box or tray, and the drawings of neither the original nor the reissued patents show that the upper berth is made hollow or that it is a box or tray adapted to contain a mattress. If the top of the berth A were simply a board cushioned on the top without the berth being hollow at all, the drawings would correctly represent such construction. 3546

Q. 55. Please compare the devices of what you have termed the Richmond Car; the Petersburg Car, so far as the one section represented in Defendants' Exhibit Drawing Petersburg Car No. 2 is concerned; and the devices contained in Defendants' Exhibits Luce & Morrison 1859 patent, Dirks 1859 patent, Brown 1860 patent, and Burke & Sulger 1860 patent, with the alleged invention of Complainant's Exhibit No. 4, referred to in the 1st claim thereof, pointing out wherein such devices resemble or differ from the said alleged invention? 3547

A. I have made the comparison required by the question, and I find that said Richmond Car contains, like the Field & Pullman reissue, an upper berth hinged to the wall of the car, capable of being turned up from a horizontal to substantially an upright position in the daytime, where it is held by catches, and lowered to a horizontal position at night to form a sleeping berth, where it is supported by resting on stops secured to the sides of permanent partitions. 3548

Said Petersburg Car, so far as the section referred to in the question is concerned, like the Field & Pullman reissue, contains an upper berth hinged to the wall of the car, capable of being turned up from a horizontal to substantially an upright position in the daytime, where it is held by catches entering

3549 partitions, and lowered to a horizontal position at night to form a sleeping berth, where it is supported by resting on catches attached to the bottom of said berth at each end inserted into the sides of said partitions.

Said Luce & Morrison, 1859 patent contains, like the Field & Pullman reissue, upper berths hinged to partitions parallel with the walls of the car, capable of being turned up from a horizontal to substantially an upright position in the daytime, 3550 where they are held by hooks attached to the partitions, and lowered to a horizontal position at night to form sleeping berths, where they are supported by resting on benches or rests attached to posts, which extend from the floor to the ceiling of the car in front of the berths.

Said Dirks 1857 patent, like the Field & Pullman reissue, contains upper berths hinged to the walls of the car, said berths being made in two parts, hinged together and 3551 capable of being turned up from a horizontal to substantially an upright position, where they are held during the day and lowered to a horizontal position during the night, to form sleeping-berths, where they are supported by resting on cleats attached to the partitions at each end of the berths.

The said Richmond Car, Petersburg Car so far as the section referred to in the question is concerned, Luce & Morrison 1859 patent, and Dirks 1859 patent, differ from said Field & Pullman reissue, so far as 3552 the alleged invention referred to in the first claim is concerned, in that their supporting devices for each and all of their upper berths, when in a horizontal position, are not suspending devices as set forth in said reissue, and are not moved out of the way and concealed in the daytime.

The Brown 1860 patent, referred to in the question, like the Field & Pullman re-issue, contains an upper berth pivoted to the walls of the car for night use, and is maintained in a horizontal position for that purpose by jointed links pivoted to the walls

of the car, near the roof, and to the edges of the upper berth. It differs, however, from the Field & Pullman re-issue in that it is not intended that this upper berth shall be turned up from a horizontal to substantially an upright position, but the berth is turned bodily up to the top of the car, where it is held by hooks, the suspending devices being moved out of the way during the daytime. 3553

Said Burke & Sulger 1860 patent contains upper berths, which are connected by eyes to rods near the sides of the car, resting on stops. The fronts of the berths are sustained by jointed links attached to the roof of the car and to the fronts of the berths, which are substantially concealed and out of the way when the berths are raised up near the roof of the car in the daytime. Like the Field & Pullman re-issue, these berths are sustained in a horizontal position by means of jointed links attached to the roof of the car, and by resting upon supports connected to the walls of the car. They differ from the Field & Pullman re-issue in that said berths are not hinged to the walls of the car and are not turned up from a horizontal to substantially an upright position during the day. 3554 3555

Q. 56. Please compare the devices of what you have termed the Chambersburg Car and of the Petersburg Car with the exception of those of the ladies' apartment, and of the Erie Car and of the Rock Island Car, and the devices contained in Defendants' Exhibit Hazeldine 1855 English Patent, and in Defendants' Exhibit Scientific American 1861, with the alleged invention contained in Complainants' Exhibit No. 4 and referred to in the first claim thereof, and state whether or not each of said cars and exhibits embodies in substance the said alleged invention, giving your reasons for any opinions you may express? 3556

A. I have made the comparisons required by the question. If the court shall construe the first claim of the Field & Pullman reissue as embracing in its scope the combination with the upper berth, one

3557 side of which is connected with the wall of the car,
of suspending devices for supporting the front part
of such berth attached to the car at points above the
horizontal plane of the berth as described in the
broad construction I have heretofore referred to, no
matter what their construction or operation may be,
provided that they may be moved out of the way
when the berth is turned up from a horizontal to
substantially an upright position, and may be con-
cealed by any means when the berth is in this posi-
3558 tion, and this is what I understand the claim to
mean; then I am of the opinion that each of said
cars and exhibits contains the alleged invention of
said claim for the following reasons:

The Chambersburg Car contains an upper berth,
one side of which is hinged to the wall of the car
having suspending devices for supporting the front
part of such berth constructed so that the berth may
be turned up from a horizontal to substantially an
upright position, and the suspending devices moved
3559 out of the way and almost wholly concealed and
capable of being entirely concealed and *vice versa*.
These suspending devices are straps of girthing se-
cured to the roof of the car and to the front of the
berth each side of the middle of the berth, the point
of suspension of the straps to the roof being behind
the front of the berth, so that they stand at an
angle from the roof to the front of the berth and
aid the fixed supports connected with the fixed par-
titions in supporting the berth in a horizontal posi-
3560 tion, the straps being strong enough, however, to
support the berth in a horizontal position in case the
fixed supports should not be used, or for any reason
should give way. By slightly increasing the angle
of the suspending devices in reference to the roof of
the car and the berth, they would be entirely con-
cealed when the berth was in its raised position.
Therefore the construction of the Chambersburg Car
comes within the language of the said first claim.

The Petersburg Car in the gentlemen's sleeping
apartment, contains an upper berth one side of

which is hinged to the wall of the car, having suspending devices for supporting the front part of such berth, constructed so that the berth may be turned up from a horizontal to substantially an upright position and the suspending devices moved out of the way, and may be concealed, and *vice versa*. These suspending devices for the berth that I have referred to are metallic rods pivoted to the roof of the car back of the front edge of the berth, each side of the middle of the berth, so that they stand at an angle from the roof to the front of the berth, the lower end, when the berth is horizontal, being connected to studs on the front of the berth, and thus support the same in a horizontal position for sleeping. In the daytime when the berths are turned up into an inclined or substantially upright position the ends of these metallic rods are attached to studs on the bottom of the berth, the rods being snugly against the bottom of the berth and out off the way to hold said berth in such inclined position.

3561

3562

3563

These rods may be concealed in a variety of ways, if desired. Therefore this construction in the Petersburg Car comes within the language of the said first claim.

The Erie Car contains an upper berth, one side of which is hinged to the wall of the car, having suspending devices for supporting the front part of such berth, constructed so that the berth may be turned up from a horizontal to substantially an upright position, and the suspending devices moved out of the way and may be concealed. These suspending devices for the berth are metallic rods pivoted to eyes in the roof of the car above the front edge of the berth at each end thereof, so that they stand above the horizontal plane of the berth, and their lower ends are hooked into eyes and thus support the same in a horizontal position for sleeping. In the daytime, when the berths are turned up into an inclined, or substantially upright position, the ends of these metallic rods are sup-

3564

3565 ported parallel with the roof of the car by hooks attached to the roof of the car, and are out of the way and may be concealed.

Therefore I am of the opinion that the construction of the Erie Car comes within the language of the said first claim.

The Hazeldine 1855 English patent describes, in the provisional specification, a carriage or vehicle having a certain construction of the wheels in relation to such carriage, which I need not fully describe. It then says :

“When I apply this invention to ambulance carriages I fit the inside of the body with movable bedsteads and other conveniences for carrying the wounded.”

In the final specification the inventor more fully describes and shows what he has referred to in the provisional specification. The specification says :

3567 “As regards ambulance or hospital carriages for soldiers, &c., to which this invention is especially applicable, I would add that I not only adopt the said wheels and axles and attach the carriage thereto as aforesaid, but I likewise arrange and fit up the interior thereof with movable bedsteads and other conveniences, as hereafter described.”

In referring to the drawings, the patentee says :

3568 “Figure 1 is a side elevation, Figure 2 a back elevation; figure 3 a plain view, and figure 4 a transverse section, shewing more particularly the interior construction and arrangement of the body of the cart. * * * * * Deeming the foregoing to be a sufficient description of my invention as applicable to vehicles generally, I will now describe its particular adaptation to the purposes of an ambulance cart as I have represented it in the drawing. The interior is fitted with a number of rising and falling beds or cushions *m, m*, which are capable of being turned up on their hinges when not required, as explained by the figure 4.”

As shown in figures 1 and 3, the ambulance ap-

pears to be of a sufficient length for the purpose of beds being arranged along its sides. Figure 4 clearly explains to me how the beds or cushions are supported and operate. The hinges referred to in the description are to be at the upper back edges of the platform upon which a mattress or bed is shown and these hinges are fastened to the upper and front edge of a timber running parallel to the wall or side of the ambulance. Each uppermost rising and falling bed provided with what is shown in the left hand of figure 4, is clearly a strap attached to the roof of the ambulance and to the front edge of the platform of the bed by a strap and buckle. This strap is of such a length that when the bed is turned on its hinges into a substantially upright position, and the strap is not disconnected from the buckle, it lies snugly near the roof of the ambulance. The left hand upper portion of figure 4 shows the bed suspended from above its horizontal plane by the straps and buckle, while the right hand upper portion of this figure shows the upper bed raised into an upright position against the side of the ambulance, while it is shown in dotted lines supported in a horizontal position by what is evidently a strap. Although but one strap is shown in figure 4 for each upper bed, as the strap in the left hand upper corner of this figure is shown in full lines, and the figure is a transverse section taken through about the center of the ambulance, it shows to me that the strap shown is on one side of the center of the bed, and there would naturally be another strap on the other side of the center which could not be seen. Although these straps are not described as being concealed when the beds are up, they may be concealed in a variety of ways. This English patent therefore shows the combination of an upper berth, one side of which is connected with the wall of the ambulance, with suspending devices for supporting the front part of such berth, the parts being constructed so that the berth may be turned up from a horizontal to substantially an upright

3573 position, and the suspending devices are moved out of the way and may be concealed, and *vice versa*, the structure thus coming within the language of the said first claim.

The Defendants' Exhibit Scientific American, 1861, shows and describes a tent and states: "The novelty of the invention is found in the interior, in the berths or bunks attached by hinged joints to the supports. In the tent of the engraving, four of these bunks are represented; the two at the
3574 "right being drawn up and out of the way, and the two at the left as prepared for sleepers. The hinge joints are indicated by the letters A, B, C, D, E, F are ring hold-fasts by which the cords fastened to the outer corners of the berths and controlling their position, are supported.

* * * * *

"During the day, the bunks may be drawn up in the tents, or used as seats, shelves or tables."

Although the supporting ropes for the berths are
3575 not shown concealed from view they may be concealed in a variety of ways.

This construction shows the combination with the upper berth, one side of which is connected with the frame of the sides of the tent of suspending devices for supporting the front part of such berth, and capable of being moved out of the way in the day-time, the parts being constructed so that the berth may be turned up from a horizontal to substantially an upright position, and the suspending devices
3576 moved out of the way, and they may be concealed, and *vice versa*.

This construction is substantially covered by the language of the first claim, of the reissued patent.

The Rock Island Car contains the combination of an upper berth, one side of which is connected with the wall of the car with suspending devices for supporting the front part of such berth and capable of being moved out of the way in the day time, the parts being constructed so that the berth may be turned up from a horizontal to substantially an up-

right position, and the suspending devices moved 3577
out of the way and concealed, and *vice versa*; the
suspending devices being almost identically the
same as what are shown in the drawings and stated
in the specification of the reissued patent to be *the*
preferred form of suspending devices.

This structure, therefore, comes within the lan-
guage of the first claim of the reissue.

Adjourned to to-morrow, April 6th, 1882, at 10
o'clock A. M.

3578

NEW YORK, April 6, 1882.

Met pursuant to adjournment.

Counsel appearing as before.

WM. C. HICKS' EXAMINATION CONTINUED :

Q. 57. What advantage or result is derived from
constructing the suspending devices, so that when
the berth is turned up from a horizontal to substan-
tially an upright position, they may be concealed, 3579
as set forth in the first claim of Complainants'
Exhibit No. 4; and is any advantage or result
due to such construction described in or apparent
from the specification and drawings of said reissue?

A. No mechanical advantage or result derived
from so constructing the suspending devices for the
upper berth, so that when the latter is turned up
such devices may be concealed, is described in the
specification of the reissued patent of Field &
Pullman, or is ascertainable from the drawings of 3580
that patent. When the berths are in a horizontal
position the suspending devices for supporting such
berths attached to the car at points above the hori-
zontal plane of the berth, especially if such devices
are the preferred form described in the reissue, will
be in sight of and to a certain extent inconvenient
to persons occupying the berths, and they are liable
to strike their heads or feet against them. The
only advantage that I can conceive of for so con-
structing these suspending devices that they may

3581 be concealed when the berth is up is that the interior of the car may perhaps look better to the eye of a critical observer than if such suspending devices were not concealed.

Q. 58. Assuming that the Court shall construe the first claim of Complainants' Exhibit No. 4 to mean the combination with the upper berth, one side of which is connected to the wall of the car, with the suspending devices described in the specification of said reissue as the preferred form of suspending devices, viz : those shown in the drawings of said reissue, consisting of two jointed metallic straps C C, one at each end near its inner front corner, the upper ends of the straps being pivoted near the upper corner of the car, state whether or not, in your opinion, there was any invention in the making of that combination, at the date of the original Field & Pullman Patent, and whether the making of said combination was, at the said date, the result of anything more than mere mechanical skill and judgment, in view of the structures referred to in your answers to questions 55 and 56 and others, that you, as a mechanical engineer, have knowledge of, as existing at that date, leaving out of consideration the Rock Island Car, giving your reasons for any opinion you may express?

3583

A. In my opinion there was no invention in the making of the combination referred to in the question at the date of the original Field & Pullman Patent, but the making of said combination was the result of mere mechanical skill and judgment, in view of the structures referred to in my answers to questions 55 and 56, and others that I have knowledge of, and which were known to others at that date, for the following reasons: Jointed links, chains and straps had been used for sustaining platforms, hinged to partitions or the like, so that said platforms could be moved up to a substantially upright position, and the jointed links, chains and straps moved out of the way and concealed, prior to 1865. Such jointed links, chains and straps had been

3584

head board of one berth and the foot board of the 3617
other, and which can be moved away from between
the sections so as to leave the upper part of the car
clear by day.

This movable partition is hinged to the side of the
car above the back of the seats, and joins the parti-
tion between the backs of the seats on a horizontal
line, and is moved substantially crosswise of the car
in folding up, as it does upon hinge-like webs which
unite practically into one piece the various panels
of which it is constructed. I am therefore of the 3618
opinion that each of these defendants' exhibits and
cars referred to in the questions contains the sub-
stance of what is described in the fifth claim of said
reissued patent.

Q. 64. Please compare the devices of Defendant's
Exhibit, Fisher 1860 patent; Creighton 1808 patent;
McNeill 1859 patent, No. 24,136; Burke & Sulger
1860 patent; and Luce & Morrison 1859 patent, and
what you have termed the Rock Island Car, with
the alleged invention referred to in the fifth claim 3619
of Complainants' Exhibit No. 4, pointing out
wherein they resemble or differ from said alleged
invention; and also state what changes, if any,
would have to be made to enable such devices to
embody the said alleged invention; and whether
anything more than mechanical skill was required
at the date of the original Field & Pullman patent
to make such changes?

A. I have made the comparison required by the
question. 3620

In each of the exhibits and in said car, is
found the combination with two adjoining
upper berths of a movable partition in one
piece which when placed in position for night use
serves as the head-board of the one berth and the
foot board of the other, and which can be moved
away from between the sections so as to leave the
upper part of the car clear by day.

In the Fisher patent the upper berths are lettered
D, to which a head-board P is attached by hinges so

3621 as to admit of its being turned down on the berth when the latter is to be moved out of the way in the day time.

In the Creighton 1858 patent the upper berths are lettered A¹ and each is described as having a partition B¹ secured at one end of said berth so constructed that it may be folded up during the day time when the berth is raised and thus moved away to leave the upper part of the car clear by day.

3622 In the McNeill 1859 patent the upper berths are lettered M, and each is described as having a head-board and a foot-board *x*, which admits of being folded down or raised at pleasure, and thus can be moved away to leave the upper part of the car clear by day.

In the Burke & Sulger 1860 patent the upper berths are lettered J and each is described as having a head-board *k*, hinged to each upper berth which are folded down under the mattress during the day when the berth is raised and thus moved away to leave the upper part of the car clear by day.

3623 In the Luce & Morrison 1859 patent the upper berths are marked C, and each is described as being hinged to the partition running lengthwise and parallel with the sides of the car and as having head and foot boards, marked I, hinged to the ends of the berths and so constructed that they may be folded down during the day when the berth is raised up and thus moved away to leave the upper part of the car clear by day.

3624 In the Rock Island car the upper berths are hinged to the side of the car and each berth has hinged at one end a head-board which serves also as a foot-board for the other berth adjoining it, so constructed that it may be folded up during the day time when the berth is raised and thus moved away to leave the upper part of the car clear by day.

In order to change the constructions described in the said defendants' exhibits and Rock Island Car, so that they shall embody the said alleged invention

described in the fifth claim, the head and foot boards 3625 should be disconnected from the berths by removing to the hinges which would have required no more than mechanical skill at the date of the original Field & Pullman patent.

Q. 65. Please compare the devices of Defendants' Exhibits, Luce & Morrison 1859 patent, and what you have termed the Erie, Richmond and Rock Island Cars, with the alleged invention referred to in the sixth claim of Complainants Exhibit No. 4, and state whether or not, each of said exhibits and 3626 cars contains in substance the said alleged invention?

A. I have made the comparison required by the question.

The said Luce & Morrison 1859 patent, shows a box or tray adapted to contain a mattress, and connected with the wall of the car at the upper edge of one of its sides, whereby it can be made to occupy a lower position at night, and leave more room under it by day than if otherwise constructed and sup- 3627 ported.

This box or tray is provided with a bottom, composed of strips of webbing, stretched by springs at each end, so that they may be elastic for bedding.

The said Erie Car, Richmond Car and Rock Island Car have boxes or trays, adapted to contain a mattress, and each connected with the wall of the car at the upper edge of one of its sides, whereby it can be made to occupy a lower position at night and leave more room under it by day than if otherwise 3628 constructed and supported.

Each of these cars and the exhibit referred to in the question contains, in my opinion, the alleged invention set forth in the sixth claim of the Field & Pullman reissued patent.

Q. 66. Please compare the devices of what you have termed the Richmond Car with the alleged invention referred to in the seventh claim of Complainants' Exhibit No. 4, and state whether or not the said car embodies in substance the said inven-

3629 tion, giving your reasons for any opinion you may express?

A. I have made the comparison required by the question. The Richmond Car contains an upper berth, having its outer or wall side made sloping or inclined, precisely the same as described in the seventh claim of the reissued patent, said outer wall being cut away.

Q. 67. State whether or not it required anything more than mere mechanical skill at the date of the
3630 original Field & Pullman patent to make the alleged invention referred to in the seventh claim of Complainants' Exhibit No. 4, in view of the various cars and exhibits referred to by you, and such mechanical constructions as you have knowledge of as existing at or prior to that date, giving your reasons for any opinion you may express?

A. I am of the opinion that it required nothing more than mere mechanical skill at the date of the original Field & Pullman patent to make the al-
3631 leged invention referred to in the seventh claim of Complainants' Exhibit No. 4, in view of the various cars and exhibits referred to by me, and such mechanical constructions as I have knowledge of as existing at or prior to the said date; my reasons are as follows:

It was a well known and common thing to cut off the corners or give an angle to the parts near hinges to give more motion on the hinges, and to prevent said corners from striking parts which lay in the
3632 way of the movement of said corners around the hinges. If said berth, when hinged to the side of the car and turned up into a substantially vertical position, placed the corner of the berth near the hinge in a position which rendered said corner liable to be hit, an ordinary mechanic would cut it off or round it to get it out of the way and make more room.

Q. 68. Compare Complainants' Exhibit Defendant's Car with the alleged invention referred to in the first and third claims of Complainants' Ex-

hibit No. 4, and state whether or not, in your 3633
opinion, the said car contains the alleged inventions, or either of them, giving your reasons for any opinion you may express?

A. I have made the comparison required by the question.

If the first claim of the Field & Pullman reissue shall be construed as indicated by me in the first part of my answer to Question 56, then I am of the opinion that the said defendants' car contains the said alleged invention of the said first claim. If, 3634
however, the first claim shall be given, the limited construction referred to in Question 58, then I am of the opinion that the said defendants' car does not contain the alleged invention of the said first claim so construed, because it does not contain the special jointed links referred to in the reissued patent as the preferred form of suspending devices, but on the contrary, contains a simple counterbalancing arrangement of chains, weights and pulleys, one on each side, attached to the front end 3635
of the berth, the weights being arranged in such a position in the pocket which contain them in the walls of the side of the car, that when the berth comes to a horizontal position said weights strike against stops in said pockets, which are so fixed as to arrest the vertical movement of the weights and so arrest the further movement of the front of the berth, and there hold the berth in a fixed horizontal position.

In my opinion these chains and weights arranged 3636
and applied as I have described, are not equivalent for the *preferred form* of suspending devices described in the specification in their construction and mode of operation.

If the Court shall construe the third claim of the Field & Pullman reissued patent, to mean what I have said I understand it to mean in the first part of my answer to question 61, then I am of the opinion that the said defendants' car contains the said alleged invention.

- 3637 If, however, the Court shall give the said third claim the restricted construction referred to in the latter part of my answer to question 61, then I am of the opinion that the said defendants' car does not contain the alleged invention of said third claim, because the defendant's car has, in addition to partitions at each end of the upper berth, extensions of such partitions below the bottom of the berth when in a horizontal position, and running down to the floor, substantially the same as in the Richmond, Chambersburg and Petersburg Cars, the said
- 3638 extensions in defendants' car forming partitions from $7\frac{1}{4}$ to 10 inches wide, as referred to in the stipulation that I have heretofore adverted to, not quite so wide as those in the said Richmond, Chambersburg and Petersburg Cars, but this width only differing in degree.

Adjourned subject to agreement.

3639

NEW YORK, May 11th, 1882.

Met pursuant to agreement.

Present—For complainants, B. F. THURSTON, Esq.,
for defendants, M. B. PHILIPP, Esq.

WILLIAM C. HICKS .CROSS-EXAMINED BY MR.
THURSTON:

- 3640 x-Q. 69. Referring to the Field & Pullman invention, I understand you to have said in substance, that a claim made to the combination of an upper berth hinged to the side of the car, and suspended by jointed suspenders from the roof, so as to be capable of being turned up to occupy an inclined position, and to be let down to occupy a horizontal position would be anticipated by various prior structures, as for example, the Richmond Car, the Petersburg Car, and others. Am I correct in my understanding of your testimony in that particular?
- A. You are not correct, for as I understand the

question, the assumption is, that the specific device of jointed suspending links, as shown in the Field & Pullman patent are made an element or elements of the combination. If the Rock Island Car is included in the expression "and others," then the question would be answered yes, so far as that car is concerned. 3641

x-Q. 70. Then you wish to be understood as saying, that if the claim to the combination of a hinged upper berth with suspending devices recited in the first claim of Reissued patent 6,648 be limited to hinged suspenders of the rule-joint type, none of the structures shown by the proofs of the defendants to have been prior to the Field & Pullman patent, with the exception of the so-called Rock Island Car, anticipates such combination? 3642

A. I wish so to be understood.

x-Q. 71. Under the general expression "jointed suspenders" a suspending device consisting of a series of links jointed together and united to form a chain would be fairly comprehended, would it not, in your judgment, both with respect to the capacity of such suspending device to be moved out of the way as the result of its flexibility and with respect to its capacity to support the berth in a horizontal position when one end of such chain is attached to the roof of the car and the other end to the front edge of a hinged upper berth? 3643

A. Yes, if the ends are attached so that the series of links shall have the same mode of operation as the jointed suspender with two links. That is to say, if so combined with the other parts that the suspending device is flexed out of a straight line which it assumes when holding the weight in a horizontal position. 3644

x-Q. 72. All of your answer beyond the direct reply to my question was comprehended as a limitation in the question itself. I therefore repeat, under the term "jointed suspender" would not a device consisting of two links jointed specifically as shown in the drawings of the Field & Pullman patent as well

3645 as a suspending device consisting of a chain composed of many links, both the chain and the two joint links being combined with the car and the berth in the same way, be comprehended?

A. Yes.

x-Q. 73. In your opinion would or would not suspending devices such as leather straps or straps of webbing be mechanical equivalents for two links jointed together or many links jointed together?

A. If they performed the same office, under the
3646 same conditions, I think they would be.

x-Q. 74. Referring now to the second claim of the original Field & Pullman patent, if such claim were construed to be for the combination with the upper berth, one side of which is hinged to the wall of the car, of suspenders of such character as to allow the berth to be turned up to an inclined position during the day, and to be concealed behind the berth, because of their flexibility and capacity to be turned inward, and not specifically
3647 limited to two links united by a rule-joint, would not, in your opinion, such claim, made in September, 1865, be invalid, in view of the previously known state of the art relating to sleeping coaches?

A. I think it would.

x-Q. 75. Referring now to the reissued Field & Pullman patent, No. 6,648, and to that part of your deposition which says, in effect, that there is not exhibited in the drawings or described in the text of the original patent, a box or tray, with sides, end
3648 and bottom, capable of sustaining a mattress wholly enclosed within it, I ask you whether the drawings do not show clearly, to the understanding of the practical draughtsman, a frame of wood or other suitable material, rectangular in form, and upon which in the drawing is placed the letter A?

A. Yes.

x-Q. 76. Does it not, also, clearly appear from the drawings that the top surface of the berth is made suitable for a couch to sleep on, and would it not suggest plainly the idea that such couch was either

a removable mattress or fixed upholstery suitable 3649
for a bed?

A. Yes, I think so.

x-Q. 77. Does it not also appear plainly from the drawing that the hinged connection between the upper berth and the side of the car is made by attaching one leaf of the hinge to the top edge of the frame of the upper berth?

A. I think so.

x-Q. 78. What is the necessary effect of so attaching the hinge with respect to the plane of elevation 3650 that the upper berth will occupy as to its under surface when in a horizontal position?

A. The under surface would be in a plane below the plane of the hinge.

x-Q. 79. And as a consequence will there not be more vertical space for the occupant of the berth than would exist if the hinge was not so connected?

A. Yes, undoubtedly.

x-Q. 80. And for the same reason the lower wall 3651 edge of the berth under the hinge will occupy a higher plane when the berth is turned upward, will it not?

A. Yes.

x-Q. 81. Referring to your statement that the re-issued patent says that the counter weights assist in supporting the weight of the berth, I ask you whether it is not a fact that such counter weights do and must incidentally aid in upholding the berth? 3652

A. Undoubtedly.

x-Q. 82. And is it not also the fact that the handling of the berth is facilitated by the counter weights?

A. I think so.

x-Q. 83. And is it not also the fact that the counter-weights are useful to prevent the berth from falling down if the holding catch or latch, to confine the berth in an upturned position, becomes broken or disengaged?

3653 A. There is nothing shown in the patent to hold the berth up except the counter-weights. The counter weights would act as supposed in the question if there were a catch. I modify my answer by saying that a spring catch is referred to in the specification of the original patent, though not shown in the drawings.

x-Q. 84. Have you any reasonable doubt, as a mechanician, that parting strips are exhibited in the drawings of the Field & Pullman patent, and that
3654 such strips are necessarily contemplated from the tenor of the description in the original patent—particularly by the sentence: “J is a movable head-board slipped in when the berth is made up, to fill up the *balance of space* at each end of berth”?

A. No; I think I should infer that the balance of the space was filled up in some manner.

x-Q. 85. You recognize it to be a true statement, do you not, that, prior to the Field & Pullman invention, head and footboard partitions were composed of more pieces than one for the upper berth,
3655 each separately adjustable in some cases; and that in other cases partitions were permanently attached to the berths so as to be taken down and set up with them?

A. I don't remember divided head and footboards for the upper berth; as to the remainder of the question I can answer affirmatively.

x-Q. 86. You have remarked in your deposition that the removable head-board for the upper berth, to be
3656 slipped in when the berth was made up, is shown in the drawings and described in the specification, but no catches or other contrivances are shown to prevent it from tumbling over upon the heads of the passengers, and that unless there be some holding contrivance the device would be useless, but rather harmful. In your opinion as a mechanician, the movable head-board being shown and described and its office as a head and foot-board stated, would it require anything more than mechanical skill to construct a car with devices to keep the head and foot-

boards in their proper places, and prevent them from 3657
tumbling over?

A. I think it would not.

x-Q. 87. When you examine the drawings of the
Field and Pullman original patent and notice the
language of the description in the words, "when
the car is used as a day car the front edge of the
berth, A, is raised up to an angular position * * *
in which position it is entirely out of the way, and
the mattresses and bedding of both upper and lower
berths are shut out of sight into the triangular re- 3658
cess in corner of car," do you not understand clearly
that the construction is such that an elevated closet
is formed in the upper corner of the car, of which
closet the upper berth hinged to the wall of the car
is the door?

A. Yes, with the roof and side of the car as the
other boundaries.

x-Q. 88. Do you know of any car prior to the
Field and Pullman patent, excluding the so-called 3659
Rock Island Car which shows an elevated
closet composed of the upper berth as a hinged door
to the same, and with the boundry walls of the closet
consisting of a portion of the roof and side of the
car and with fixed partitions for the ends of such
closet, such fixed partitions not extending down to
the floor of the car so as to obstruct the space or
intercept the view?

A. I do not.

x-Q. 89. Prior to the Field & Pullman patent, do
you know of any sleeping car proved to have had 3660
an existence or described in any patent in which there
is shown an upper berth hinged to the wall of the
car in combination with a counter-balance con-
nected with the front part of such berth, to facili-
tate the handling of the same, and incidentally aid
in supporting it?

A. I do not.

x-Q. 90. You have referred, in the course of your
deposition upon this subject, to the prior Mann
patent of 1858, and to the prior Knight patent of 1859,

3661 and referring to both these prior subjects, you have said that counter-balance weights are employed to facilitate the handling of the berths; but that such upper berth was moved bodily upward toward the roof of the car when it was desired to get the upper berth out of the way during the day, and were not, as in the Field & Pullman car, hinged to the side of the car. Now, do you not recognize that there is a specific functional difference between a combination of counter-balanced and hinged upper berth, and
3662 counter balanced and unhinged or dead weight upper berth?

A. Yes, I recognize the difference, and yet the office of the counterbalancing apparatus as connected with the front of the upper berth performs the same functions as regards said front except in degree, the angular position of the cords varying the strain, which otherwise would be direct. The hinging of the berth of course takes one-half of the weight of the berth, which in the patents referred
3663 to is taken by the additional counter-weight at the back.

x-Q. 91. Do you not recognize that a combination of upper berth and counter-balance is modified as to the capacities of the counter-balance, in case the berth be hinged to the wall, the counter-balance being arranged so as to exert a pull upon the berth in a direction angular to the plane of the berth when in a horizontal position?

A. I do.

3664 x-Q. 92. In the instances of upper berths, combined with counter-balance weights, such as is shown in the Knight & Mann patents, it is necessary, is it not, or at least very advisable for safety, that the counter-balance should be heavier than the berth?

A. Yes.

x-Q. 93. When a berth is hinged to the wall of the car, as in the Field and Pullman car, in what position of the berth does the counter-balance act most effectively to hold the berth, or, in other words, in

what position is the weight relatively heavier than the berth, assuming the pull of the berth upon the counter-balance to be exactly equal to the pull of the counter-balance weight upon the berth when the berth is in a horizontal position? 3665

A. When the berth is in a vertical position.

x-Q. 94. And the relative pull of the weight increases at all points between the horizontal and the vertical, does it not?

A. It does.

x-Q. 95. Under an arrangement of hinged berth and counter balance, no very great nicity of adjustment is required, is there, between the weight and counter-balance and the pull of the berth, so long as the weight is sufficient to prevent the berth, when turned upward, from falling down? 3666

A. No; but if the weight exactly counterbalanced the berth in its upper position, there would be no counter-balance when the berth was turned further down, and the berth would tend to fall to a horizontal position from that point. 3667

Adjourned to to-morrow, May 12, 1882, at 10 o'clock, A. M.

NEW YORK, May 12, 1882.

Met pursuant to adjournment. Counsel appearing as before.

WILLIAM C. HICKS' CROSS-EXAMINATION CONTINUED 3668
BY MR. THURSTON :

x-Q. 96. The Woodruff patent of 1856 to which you refer in answer to the 62d direct interrogatory as descriptive of a car having the partitions below the upper berths cut away, so as to leave an open space above the heads of the passengers, is an arrangement whereby the upper berth is divided into two halves, and each half folded upon itself and laid against a down-hanging partition, is it not?

A. It is; yes, sir.

3669 x-Q. 97. Referring now to your testimony concerning the combination recited in the 5th claim of the Field & Pullman Patent No. 6,648, state whether in any prior patent or sleeping car known to you there is shown the combination with two adjoining upper berths hinged to the wall of the car, a removable partition in one piece, which, when placed in position for night use, serves as the head-board of the one berth and the foot-board of the other, and which can be removed from between the sections so
3670 as to leave the upper part of the car clear by day?

A. I don't remember any.

x-Q. 98. You have a clear conception in your mind, have you not, of the Richmond Car, the Chambersburg Car, and all that long list of old cars described in the proofs and exhibited in the various Letters Patent to which you have referred as prior to the Field & Pullman patent, and you are able, are you not, to bring up distinctly before your mind's eye each one of such prior structures as they
3671 are mentioned?

A. Yes, I think I am.

x-Q. 99. Is not the highest type of passenger car adapted for both day and for night use, one in which the evidences that it is intended for night use are to the largest extent removed when the car is arranged for day travel?

Objected to as incompetent, irrelevant and immaterial.

3672 A. Yes, I think so.

x-Q. 100. Is it not true that all those old sleeping cars which have standing transverse partitions extending from the roof to the floor, and of a width nearly equal to or greater than the width of a seat arranged longitudinally, are objectionable as interfering with the free circulation of air, and preventing the appearance of a less complete transformation from an arrangement for night uses to an arrangement suitable for day uses?

Same objection.

A. In general terms, yes.

3673

x-Q. 101. I have understood you to have said in substance, or at least that it is to be implied from your testimony, that in the year 1865 a broad claim for a berth hinged to the side of the car and suspended from above would be a void claim in view of previously known structures; am I correct?

A. Yes.

x-Q. 102. And it would be a void claim, would it not, even if limited to the employment of suspenders which were jointed or hinged?

3674

A. I think so.

x-Q. 103. Do you not understand that the second claim of the original Field and Pullman patent is by its terms intended to cover a berth hinged to the side of the car and supported by jointed suspenders from above, and that the broad effect of such arrangement stated in the claim, or the result to be accomplished, is that the berth can be turned up into an inclined position during the day and lowered to a horizontal position at night?

3675

A. Yes, by the means described in the claim.

x-Q. 104. And all devices which were substantial equivalents for those means you would recognize, of course, would you not, as within the claim?

A. Yes, if combined as described.

x-Q. 105. You observe that the second claim of the original Field and Pullman patent does not profess to state a combination, but covers a berth hinged to the side of the car, and supported by jointed suspenders, without imposing any limitation as to the attachment of such suspenders to effect the upholding of the berth, and without imposing in terms any construction which would accomplish the concealment of such suspenders; is not this so?

3676

A. I must regard it as a combination of the parts described, for the claim states, "all as herein described." As I understand it, it is for a berth connected by hinges, supported by jointed suspenders, so as to have the mode of operation shown and described in the specification and drawings.

3677 x-Q. 106. You agree, do you not, that the claim in terms (and that is all that I propose to ask, the legal construction being a matter for the Court) does not impose the limitations mentioned in the preceding question, do you not?

A. Yes.

WILLIAM C. HICKS.

Attest:

THOMSON H. PALMER,
Special Examiner.

3678

3679

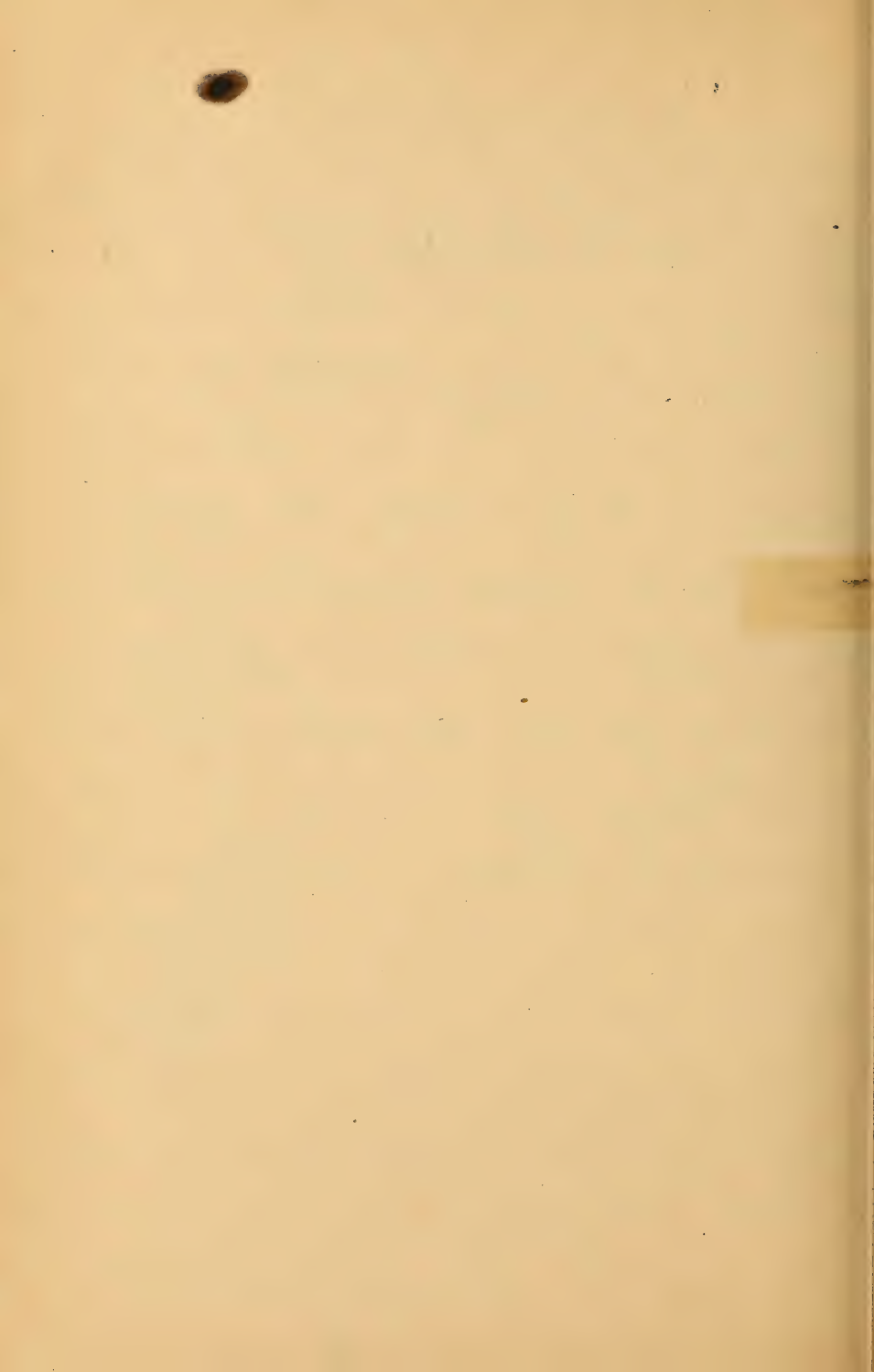
3680

Fort Wayne Car
on the Toledo and Western R.R. between Toledo Ohio and Lafayette Ind.

Built at Fort Wayne Ind 1859 } Ran for
by Gillette and Hathaway } about
2 years

An ordinary passenger car was altered, into
a sleeper by fastening the cushion seats
to the cushion back by hinges so that
when the cushion seats were pulled
out (the ^{two} seats faced each other) the
four cushions lay flat and formed the
mattress for the lower berth - a partition
which shut under the car window was
fastened to the side of the car with
hinges and when opened at right angles
formed a partition between the lower berths.

The upper berth consisted of two framed half
the width but
the full length of the berth hinged in the
middle supported by straps next to the
side of the car, and by rods on the
aisle side - these berths shut up against the
ceiling in the day time



~~The Woodruff Cars~~

The Woodruff - 2 cars built 1858

These cars were built for Herrick and Barlow
attorneys of Cleveland Ohio.
by Merrill and Bowers Car builders

The Woodruff cars were designed for
sleeping cars from the beginning.



- Toledo Car -

Car built in Cleveland 1859 ran until 1865

For Gillette and Hathaway in

Manell and Bowers Shop -

Used on the Toledo, Wabash and Western R.R.

Seats face to face 6 ft from back to back.
A cross bar ~~is~~ from seat frame to seat frame
There were sliding partitions between the
berths - which in day time when lowered occupied
the space between the backs of the seats.

See Model -

Car was 42 ft long - 8' 6" wide - 6 ft high
about 7 ft. high in center

at Wall side - without raised roof or deck

The upper berth was supported on the
side of the car by iron legs fitting
into sockets - on the aisle by iron
legs which fitted into sockets in the
seat arms -



Rock Island Car.

Ran in 1863 - as described pg. 685
altered in the Summer of 1864 " 687

Ran between Chicago Ill and Davenport Ia
on the Chicago and Rock Island R.R.

Springfield Car.
1847

About 20 feet long - 3 Compartments on
each side - Compartment partitions
about 5 or 6 ft apart.

Ran on Boston and Albany RR
from Springfield to Washington Mass.

See photographs -

When train crew were resting at
terminals they would take a wide
board to bridge the distance
between the seats and covering
this with a Cushion from another
seat make a temporary bed.







SMITHSONIAN INSTITUTION LIBRARIES



3 9088 00302966 7

nmah HE2712.P98U52

George M. Pullman and Pullman's Palace C